



## ***Local Programs Procedures***

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### **LPP 00-05** **Revised Pre-award Audit Requirements and** **Consultant Procurement**

Reference: LPP 00-03, “Revised Pre-award Audits Requirements,” and the *Local Assistance Procedures Manual*, Chapter 3, “Project Authorization,” and Chapter 10, “Consultant Selection”

Effective Date: December 15, 2000

Approved: Original Signed By  
TERRY L. ABBOTT  
Acting Assistant Program Manager  
Design and Local Programs

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#### **User-Friendly Features:**

- The text of this Local Programs Procedures (LPP) has been formatted into new and/or revised pages that can be easily inserted into the *Local Assistance Procedures Manual* (LAPM).
- Vertical bars shown in the outside margin provide clear indicators of changes both in content (revisions and additions) and format (page number, exhibit number).
- For quick reference to changes in the manual, the LPP number (LPP 00-05) appears at the bottom of pages that have been changed.
- For clarity, Chapter 10 of the LAPM is provided in its entirety.
- All previous Pre-award Audit LPPs have been incorporated into Chapter 10.
- A “Summary of Changes” table has been included for easy reference.
- A list of references has been provided to this LPP.

Furthermore, these new procedures are incorporated in the electronic version of the LAPM. This information can be found on the Local Programs Home Page on the Internet at <http://www.dot.ca.gov/hq/LocalPrograms/>. Once there, click on “publications” and then click on item 4, “Local Assistance Manuals.”

#### **PURPOSE**

The purpose of this LPP is to revise Chapter 10, “Consultant Selection” of the LAPM as follows:

- Revise Section 10.1, eliminating the pre-award audit risk assessment requirement for contracts less than \$250,000, except under certain circumstances, and;
- Update Section 10.3, raising the small purchase threshold from \$25,000 to \$100,000.

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**Pre-award Audit Requirements and**  
**Consultant Procurement**  
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**PRE-AWARD AUDIT**

**EXISTING PROCEDURES**

LPP 00-03, “Revised Pre-award Audits Requirements,” issued April 3, 2000, delineates three separate cases for the pre-award audit process. Case 1 exempts contracts under \$100,000 from a pre-award audit; Case 2 requires a risk assessment be performed to determine whether a pre-award audit is required for contracts between \$100,000 and \$250,000, and; Case 3 requires a pre-award audit for contracts in excess of \$250,000.

**NEW PROCEDURES**

The new procedures delineate two cases for the pre-award audit process, Case 1 is for contracts less than \$250,000 and Case 2 is for contracts in excess of \$250,000. See the following pages for explanation.

**SMALL PURCHASES**

**EXISTING PROCEDURES**

Small purchase procedures are used for service agreements, subcontracts and other consultant agreements. These services generally provide a duty or labor, as in service agreements, or expertise that is primarily advisory or informational in nature, as in consultant agreements. The current threshold for small purchases, which may be handled through an informal method of procurement, is \$25,000.

**NEW PROCEDURES**

To be consistent with legislation passed in 1994 (41 USC 403(11)), the threshold for using small purchase procedures for service agreements, subcontracts and other consultant agreements has been increased to \$100,000.

**SUMMARY OF CHANGES**

<b>Page</b>	<b>Change</b>
Table of Contents	Pages renumbered/ New exhibits listed.
10-2 and 10-3	Pre-award audit requirements revised.
10-6, 10-14, and 10-17	References updated.
10-12	Small purchase threshold updated.
10-20	Agreement amount revised.
10-21	Names of references added.
10-22	Agreement amount revised, reference omitted, “References” section added.

**SUMMARY OF CHANGES CONTINUED**

<b>Exhibit</b>	<b>Change</b>
10-A	“Pre-award Audit Request Letter” and “Pre-award Audit Checklist” combined into one exhibit.
10-C and 10-D	References updated.
10-E	Lump Sum phrase added.
10-H	Example 1 and Example 2 added.
10-I	Replaced “Disadvantaged Business Enterprise Agreement Requirements” with “Bidder/Proposer DBE Participation Requirements and Instructions.”
10-J	New “Sample DBE Participation Requirements” exhibit added.
10-K and 3-A	Pre-award audit requirements revised.
10-L	Replaced “Risk Assessment Request Letter” with “Pre-award Audit Notification Letter.” Risk assessment reference removed.
10-M	Replaced “Risk Assessment/Pre-award Audit Checklist” with “Standard Audit Program Procedures.”
10-N	Replaced “Pre-award Audit Notification Letter” with “Accounting & Auditing Guidelines for Contracts with Caltrans.”

**REFERENCES**

- 23 CFR 172.5
- 49 CFR 18.36
- 41 USC 403(11)
- 48 CFR 31
- OMB Circular A-110
- Government Code Sections 4525 through 4529.5

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## CHAPTER 10 CONSULTANT SELECTION

### 10.1 GENERAL

#### INTRODUCTION

A local agency may engage consultants to perform architectural, engineering and related services needed to develop a Federal-aid project. Local agencies requesting Federal funds to reimburse Architectural and Engineering consultants (see definition below) must follow the selection and contracting procedures detailed in this chapter.

#### FEDERAL LEGISLATION

The provisions of the Brooks Bill (40 USC 544) require local agencies to award federally funded engineering and design contracts on the basis of fair and open competitive negotiations, demonstrated competence and professional qualifications (23 CFR, Section 172).

#### STATE LEGISLATION

**Architectural and Engineering (A&E) consultants** - For this manual, those private consulting firms providing architectural, landscape architectural, engineering, environmental, land surveying, or construction project management services are termed Architectural and Engineering consultants. California law requires selection of A&E consultants on the basis of demonstrated competence and professional qualifications. Cost may not be used as a basis for selecting such consultants. Contracts must be negotiated in order of the most qualified consultant at prices determined to be fair and reasonable to the local agency (Government Code, Chapter 10, Sections 4525 through 4529.5).

Consultants, other than A&E consultants, are selected using cost as one of or the sole selection criteria. This chapter does not detail specific requirements for selecting these consultants. The procedures outlined in this chapter could be modified for selecting non-A&E consultants adding a cost bid to the proposal. A detailed proposal and draft contract would be required.

#### SUBCONTRACTED SERVICES

The consultant is responsible for performing the work required under the agreement in a manner acceptable to the local agency. The consultant's organization and all associated consultants must be identified at the time of the proposal.

If the consultant wishes to use a firm not specified in the proposal, prior written approval must be obtained from the local agency. If a subcontract for work or services to be performed by such firms exceeds \$25,000, the subcontract shall contain all required provisions of the prime contract.



## PRE-AWARD AUDIT

The pre-award audit requirement is placed on all consultant contracts with State or Federal-aid highway funds in the contract. Primarily, consultant contracts provide services that are advisory or informational in nature.

The extent of audit work to be accomplished depends primarily on the dollar amount of the consultant contract. The following two cases describe the pre-award audit process for the particular contract amount:

### Case 1: Contracts less than \$250,000

Consultant contracts less than \$250,000 are exempt from the pre-award audit requirements, unless: 1) There is insufficient knowledge of the consultant's accounting system, 2) There is previous unfavorable experience regarding the reliability of the consultant's accounting system, 3) The contract involves procurement of new equipment or supplies for which cost experience is lacking, 4) A consultant contractor has been designated by the State or Federal government as a high-risk recipient.

A consultant contractor may be determined high-risk if the contractor: has a history of unsatisfactory performance; is not financially stable; has an inadequate accounting system; has not conformed to terms and conditions of previous awards; or, is otherwise not responsible. For further clarification of the term high-risk, contact Caltrans Audits and Investigations.

### Case 2: Contracts in excess of \$250,000

Consultant contracts in excess of \$250,000 require a pre-award audit. The pre-award audit examines the consultant's accounting, estimating, and administrative systems; proposed costs; quantities; and financial condition. The audit is as broad in scope as necessary to meet the objectives found in Exhibit 10-M "Standard Audit Program Procedures."

Procedures to perform the pre-award audit will depend on who the local agency selects to perform the audit.

## CALTRANS PERFORMS PRE-AWARD AUDIT

For situations where a local agency selects Caltrans to perform the audit, the local agency must transmit a Pre-award Audit Request Letter and Checklist (see Exhibit 10-A) to Caltrans Audits and Investigations with copies of the proposed consultant contract and cost proposal (and cover letter copy to the DLAE). It should be noted that the consultant's cost proposal (for the prime and subcontractors) must contain a breakdown of all components of cost including labor base rate, other direct costs, overhead, and fee. For Sample Cost Proposals, see Exhibit 10-H. The agency needs to advise the consultant that an audit needs to be performed and that cooperation with the auditors is expected. A pre-award audit checklist (see Exhibit 10-A) is provided to Caltrans. Thirty calendar days should be allowed for the average audit, from the date of receipt of a complete package (request, draft contract, and each proposal with cost breakdowns). The Audit Disposition (Exhibit 10-K) shall be completed.

**LOCAL AGENCY (OR HIRED CERTIFIED PUBLIC ACCOUNTANT) PERFORMS PRE-AWARD AUDIT**

If the local agency performs the pre-award audit, the Audit Disposition (Exhibit 10-K) must be completed and transmitted to the DLAE. This is usually accomplished when the local agency submits the Request for Authorization to Proceed with Preliminary Engineering (Exhibit 3-A for Federal-aid projects). The audit must be completed before the consultant contract is executed. Failure to do this will result in loss of funds for the consultant services. **The audit must be performed in accordance with generally accepted government auditing standards promulgated by the United States General Accounting Office at: <http://www.gao.gov/govaud/ybk01.htm>**

The local agency shall follow the information in Exhibit 10-N “Accounting and Auditing Guidelines for Contracts with Caltrans” to assure that the audit objectives are clear as to the basic elements of an accounting system. In addition, Exhibit 10-M “Standard Audit Program Procedures” shall be used as the minimum procedures to be performed for the pre-award audit.

The local agency shall notify Caltrans Audits and Investigations of their decision to perform the pre-award audit using its own forces or by contracting with a Certified Public Accounting firm. The notification will be in writing using the Example Pre-award Audit Notification Letter (Exhibit 10-L). As a part of this notification process, the local agency shall also submit pre-award audit procedures. Caltrans Audits and Investigations may perform a review of such procedures and express an opinion on them as needed. Caltrans shall retain the right to audit or review the work of the local agency or designee at any time.

Negotiation may begin with the consultant while the audit is being prepared. The contract shall not be executed until the audit report has been completed and the consultant’s accounting system, rates charged, knowledge of FHWA’s cost eligibility, and documentation requirements are found satisfactory by the auditors. The local agency shall be proactive to resolve any audit comments before execution of the consultant contract.

Exhibit 3-A, “Request for Authorization to Proceed with Preliminary Engineering,” includes boxes that indicate compliance with the pre-award audit requirement when there is Federal-aid participation.

Exhibit 10-A is a sample request for a pre-award audit to be performed by Caltrans. Section 4.3 of the Caltrans’ *Service Contracts Manual* provides additional details about the audit process.

Exhibit 10-K must be signed by the local agency financial officer and submitted to the DLAE to document compliance with the pre-award audit requirement. A courtesy copy of pre-award audits conducted by the local agency shall be mailed to Caltrans’ Office of Audits and Investigations, P.O. Box 942874, Sacramento, CA 94274-0001. Exhibit 10-K will indicate that a courtesy copy was mailed to Caltrans.

The local agency is responsible for complying with these pre-award audit procedures. In the event it is found by Caltrans or FHWA (or FTA) that the reimbursed consultant costs resulting from a lack of contract provisions, unallowable or unsupported activities, or an inadequate accounting system are the responsibility of the local agency—the local agency will be subject to the sanctions mentioned in Chapter 20, “Deficiencies and Sanctions,” of this manual.

## **AUTHORIZATION TO PROCEED**

FHWA, or Caltrans acting in their behalf, must give the local agency an “Authorization to Proceed” with the work prior to the performance of any work for which Federal reimbursement is to be requested (see Chapter 3, “Project Authorization”).

Copies of the “Authorization to Proceed” and the consultant agreement must be retained in the project files for future audit purposes.

## **SELECTING THE PROJECT**

The local agency is responsible for selecting and initiating a Federal-aid highway project. The decision to begin development is influenced by a project’s need, its acceptability, and the timing of studies, financing and construction. The local agency identifies the project’s objectives, including the general level of improvement or service, operating standards, and the target date for project completion before commencing any consultant selection process.

## **10.2 IDENTIFYING & DEFINING A NEED FOR CONSULTANTS**

The need for consultant is identified by comparing the project’s schedule and objectives with the local agency’s capabilities, its staff availability, and its funding resources. If the local agency does not have sufficient staff capabilities, it may choose to solicit assistance from another agency or hire a qualified private consultant to perform the required work.

## **APPOINTING THE CONTRACT ADMINISTRATOR**

The contract administrator is responsible for the quality of consultant contract products or services. The administrator is appointed as soon as the need for consultant services is identified and is involved throughout the development of the contract provisions and administration of the consultant’s work. The contract administrator must be a public employee qualified to ensure the work pursued is complete, accurate and consistent with the terms, conditions and specifications of the contract.

The contract administrator’s duties include the following:

- Providing direction to ensure the proposed work is advertised properly, the request for qualifications (RFQ), description of work, and request for proposals (RFP), if used, are prepared and distributed, and the draft contract is appropriately prepared
- Arranging for preparation of an advance, independent, estimate of the value of the work to be contracted out
- Making analysis of the selected consultant’s cost proposal
- Serving as the successful consultant’s primary contact person
- Monitoring the consultant’s progress and providing direction
- Approving the consultant’s progress payments

The use of a consultant for a “management” role should be limited to unique or very

unusual situations. These situations require a thorough justification as to why the local agency cannot perform the work. Consultants used in management roles must be selected using the same procedures as those for other consultants specified in this directive with full justification retained in the project files for future reference.

## **DETERMINING THE PROJECT SCHEDULE**

The local agency develops a schedule to show the time for performance of work and completion of the project. The schedule includes sufficient time to allow for selecting consultants, developing consultant contracts, completing the pre-award audit, and conducting meetings and project reviews.

## **SEGMENTING CONSULTANT WORK**

Consultant services are most effective when consultant work is segmented appropriately. The extent of segmenting depends upon the type and complexity of the work. Combining preliminary engineering tasks with the preparation of the required environmental analysis is normally desirable.

Preparing an environmental assessment or environmental impact statement is more than simply writing a report. Assessment and impact reports include preliminary engineering needed to analyze project alternatives and produce an engineering and planning assessment. Initial project studies include only as much traffic and engineering analysis of alternatives as is needed to produce a sound environmental assessment or environmental impact statement (see Chapter 6, "Environmental Procedures"). Final detailed design is delayed until environmental clearance has been received if Federal reimbursement is desired.

Figure 10-1 illustrates several satisfactory ways to segment consultant activities.

## **SPECIFY PRODUCTS TO BE DELIVERED**

The contract administrator identifies the products and services to be delivered as a result of consultant contract work. These vary depending upon the type of projects and the phase of project development being addressed.

## **DEFINE SCOPE OF CONSULTANT WORK**

The scope of work, which the contract must include, is a detailed description of the products or services the consultant is to provide. From a detailed scope of work, consultants responding to a project advertisement determines personnel and time requirements, and develops a technical proposal and person-hour estimate for the contract.

## **ESTABLISH INTENT FOR DBE PARTICIPATION**

A local agency receiving Federal funds must have an adopted Disadvantaged Business Enterprise (DBE) program and annual goals. It must take affirmative steps to assure that DBE consultants are utilized when possible. Such steps include soliciting DBE firms and, when feasible, organizing the project schedule and task requirements to encourage participation by DBE firms. The consultant has the responsibility for using DBEs as sub-consultants when feasible. If a DBE subconsultant is unable to perform, the consultant

must make a good faith effort to replace him/her with another DBE subconsultant. DBE efforts shall be documented and is subject to verification.

**Figure 10-1 Segmenting Consultant Work**

	Well-structured Projects With Simple Right-of-Way Requirements	Well-structured Projects With Complex Right of Way Requirements	More Difficult Projects	Very Complex Projects
Preliminary Engineering				
Environmental Analysis				
Plans, Specifications & Estimates				
Right of Way Activities				
Utility Relocation				
Construction Engineering				

## ESTIMATE COST OF CONSULTANT WORK

An independent cost estimate is needed to ensure that consultant services are obtained at a fair and reasonable price. The estimate is prepared in advance so the local agency's negotiating team has a detailed analysis of the project from which to evaluate the strengths and weaknesses of the consultant's cost proposal. The estimate is kept confidential for use by the local agency negotiating team.

A good cost estimate can be prepared only if the scope of work is defined clearly. The scope of work must include a list of the products or services which the consultant is required to deliver and a schedule describing when they must be delivered.

The estimate must include a breakdown of:

- Direct labor costs.
- Indirect costs.
- General and administrative costs.
- Other direct costs.
- Subconsultant costs.
- Net fee.

If more than one project is to be developed within the consultant contract, separate estimates are prepared for each project.

## **DETERMINE TYPE OF CONTRACT**

The contract must specify how the consultant is to be paid. Four methods of payment are permitted on consultant contracts:

- Actual Cost Plus Fixed Fee
- Cost Per Unit of Work
- Specific Rates of Compensation
- Lump Sum

### **ACTUAL COST PLUS FIXED FEE**

This method is used most commonly. The consultant is reimbursed for actual costs incurred and receives an additional predetermined amount as a fixed fee. The fixed fee is not adjustable for the life of the contract except where there is a significant change in the scope of the work, in which case the fee may be renegotiated.

This method of payment is appropriate when the extent, scope, complexity, character, or duration of work cannot be precisely predicted. Fixed fees apply to the total direct and indirect costs. Fixed fees over 15 percent must be justified and documented in the files prior to commencement of work. (See Exhibit 10-H for a “Sample Cost Proposal” form and Exhibit 10-E for a “Sample Payment Clauses” form.)

### **COST PER UNIT OF WORK**

The consultant is paid based on the work performed. This method of payment is appropriate when the cost per unit of work can be determined with reasonable accuracy in advance but the extent of the work is indefinite. Contract payment provisions must specify what is included in the price to be paid for each item.

### **SPECIFIC RATES OF COMPENSATION**

The consultant is paid at an agreed and supported specific fixed hourly or daily rate for each class of employee engaged directly in the work. Such rates of pay include the consultant’s estimated costs and net fee. The specific rates of compensation, except for an individual acting as a sole proprietor, are to include an hourly breakdown, direct salary costs, salary additives, indirect costs, and net fee. Other direct costs may be set

forth as an element of the specific rate or may be included as independent cost items. This method of payment is used for on-call contracts and is considered only when none of the other three methods of payment can be used. It is used only for emergency work or when the tasks are relatively minor.

#### **LUMP SUM**

The consultant undertakes to perform the services stated in the agreement for an agreed amount as compensation. It is appropriate only if the extent, scope, complexity, character, and duration of the work have been sufficiently defined to permit just compensation to be determined and evaluated by all parties during negotiations.

### **10.3 CONSULTANT SELECTION METHODS**

Flow Chart 10-1 shows the three methods normally used in selecting a consultant. They are:

- One-Step Request for Proposals (RFP)
- One-Step Request for Qualifications (RFQ)
- Two-Step Request for Qualifications/Proposals (RFQ/RFP)

The method used depends upon the scope of work, the services required, the project's complexity, and the time available for consultant selection.

Beginning with Section 10.4 "Consultant Selection Using the One Step RFP Method," the selection methods are explained in detail.

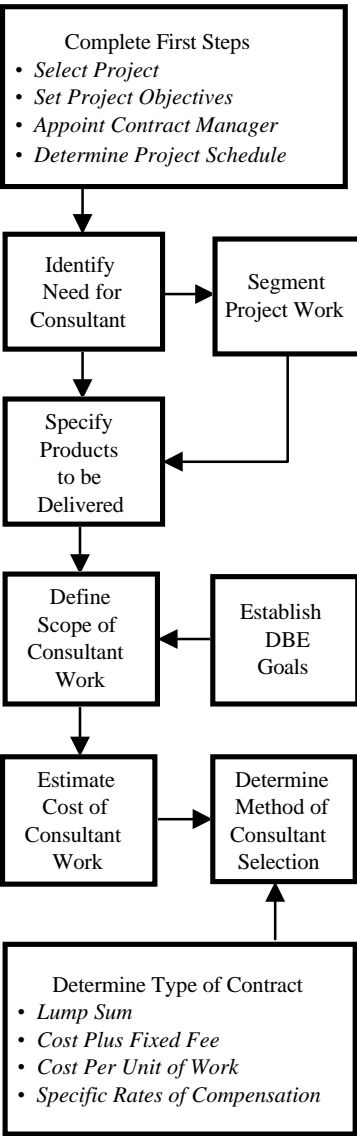
#### **ONE-STEP RFP (REQUEST FOR PROPOSALS, FOLLOWED BY INTERVIEWS AND NEGOTIATION)**

The One-Step RFP method may be used when the consultant service is highly specialized and there are few qualified consultants. This method is also used when a local agency has a modest number of projects per year, and the expected number of proposals is small--generally less than ten.

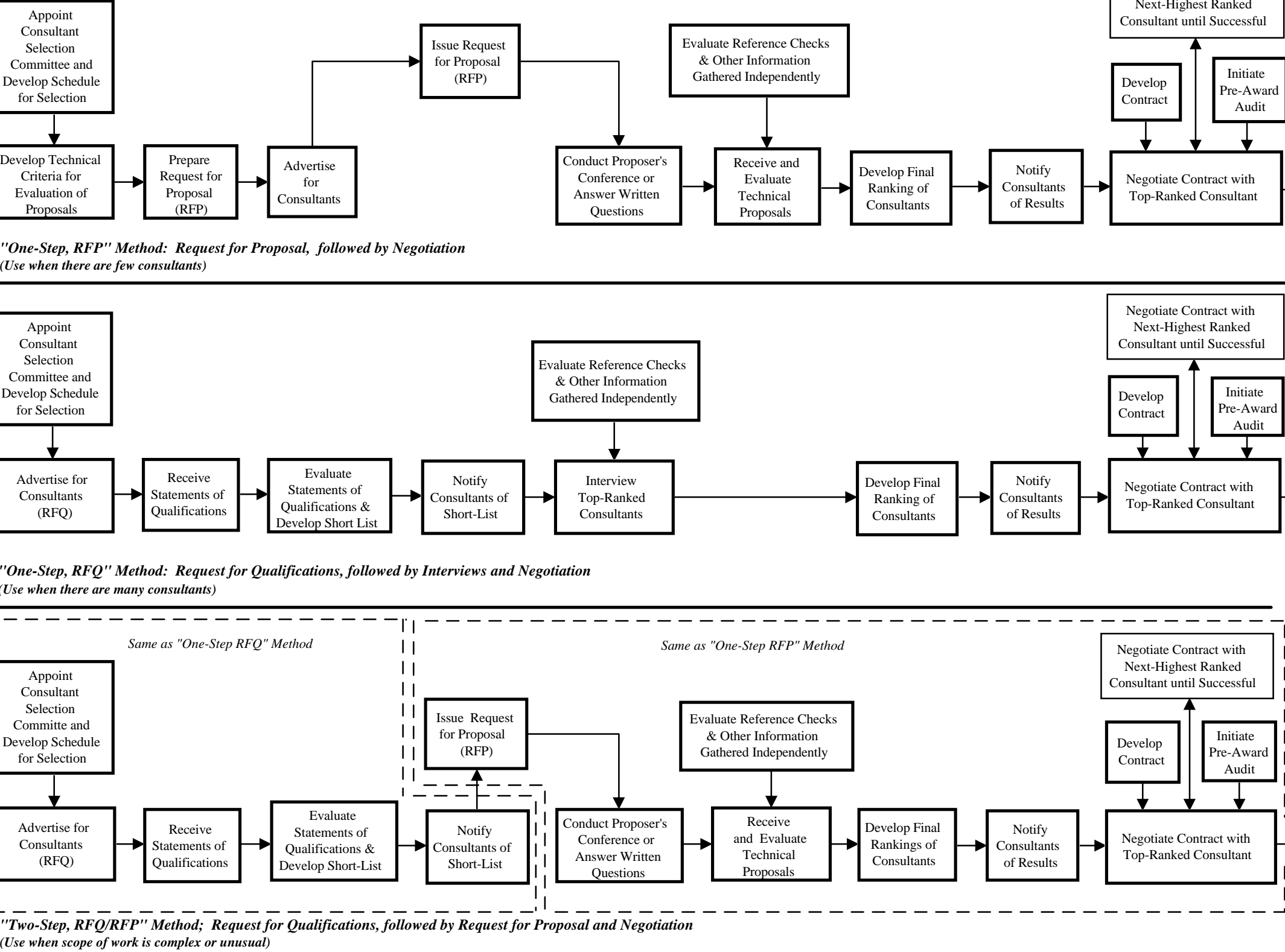
In this method, consultants submit a technical proposal and statement of qualifications at the same time. Proposals by all consultants are evaluated based on criteria outlined in the RFP and a short list of qualified consultants is developed. The local agency ranks qualified consultants and negotiation begins with the most qualified consultant.

SELECTING CONSULTANTS

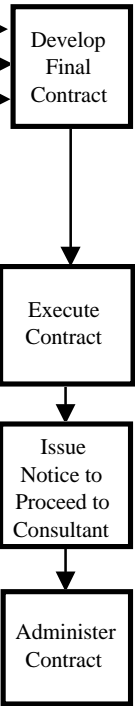
Initiate Project



Select Consultants



Complete Project





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## **ONE-STEP RFQ (REQUEST FOR QUALIFICATIONS, FOLLOWED BY INTERVIEWS AND NEGOTIATION)**

The most common selection process is the One-Step RFQ method. It is used when typical services (such as preparations of PS&E) are required and there are many consultants. The One-Step RFQ method is also used when a local agency produces many projects and there are numerous consultants that wish to participate.

The consultant submits a Statement of Qualifications in response to a request for qualifications. A consultant selection committee ranks the responding consultants and develops a short list of qualified consultants to invite for interviews. The final ranking of consultants is based on the interviews and negotiation for a specific project segment begins with the most qualified consultant. The ranking list may be used for more than one project but the ranking process must be renewed at least once each year to give additional consultants the opportunity to be evaluated and participate.

## **TWO-STEP RFQ/RFP (REQUEST FOR QUALIFICATIONS, FOLLOWED BY REQUEST FOR PROPOSAL AND NEGOTIATION)**

The Two-Step RFQ/RFP method may be used when the scope of work is complex or unusual. The Two-Step RFQ/RFP method also may be preferred by local agencies that are inexperienced about negotiations and procedures for establishing compensation. However, the Two-Step RFQ/RFP method requires substantially more work and time than the other two methods described above.

In the Two-Step RFQ/RFP process, the consultant submits a statement of qualifications in response to a request for qualifications. Responding consultants are ranked by a consultant selection committee to prepare the short list of qualified consultants. Consultants on the short list receive a Request for Proposal (RFP) and respond with a technical proposal. The most qualified consultants are placed in a final ranking and negotiation begins with the most qualified consultant.

## **NONCOMPETITIVE NEGOTIATED AGREEMENTS**

A noncompetitive, negotiated contract may be developed when special conditions arise. Conditions under which noncompetitive negotiated contracts may be acceptable include:

- Only one organization is qualified to do the work
- An emergency exists of such magnitude that cannot permit delay
- Competition is determined to be inadequate after solicitation of a number of sources

The local agency shall:

- Follow its defined process for noncompetitive negotiation
- Develop an adequate scope of work, evaluation factors and cost estimate
- Conduct negotiations to ensure a fair and reasonable cost

The local agency carefully documents details of the special conditions and retains them in the files for future Caltrans or FHWA review.

## **SMALL PURCHASES COSTING LESS THAN \$100,000**

Service agreements, subcontracts and other consultant agreements costing no more than \$100,000 each, may be handled through an informal method of procurement. The method must be one established by the local agency for providing small purchases which is sound and appropriate for procurement of consulting services. The method shall be open and competitive and provide opportunities for DBE consultants when appropriate.

Service agreements can be used by a local agency during the preliminary engineering/environmental, right of way, design and construction phases of work to hire any consultant needed to complete that particular phase of work.

Written justification must be placed in the project files for future audit purposes.

## **10.4 CONSULTANT SELECTION USING THE ONE-STEP RFP METHOD**

Of the three methods discussed, this one is most easily modified for non-A&E consulting contracts. A bid cost proposal would be part of the RFP and would be one of or the sole selection criteria. For A&E contracts, the cost proposal is not requested until the consultants have been ranked based upon qualifications and negotiation has begun with the most qualified consultant.

### **APPOINT CONSULTANT SELECTION COMMITTEE**

A consultant selection committee, with a minimum of three members, is appointed at the beginning of the consultant selection process. The committee reviews materials submitted by consultants, develops a short list of qualified consultants, and develops a final ranking of most qualified consultants. Representation on the committee includes the contract administrator and a representative from the project's functional area. Participation by a district representative is optional, upon request of the agency and agreement by the DLAE.

### **DEVELOP TECHNICAL CRITERIA FOR EVALUATION OF PROPOSALS**

The contract administrator is responsible for developing the technical criteria, and their relative weight, which is used to evaluate and rank the consultant proposals.

The criteria and relative weights must be included in the RFP. Exhibit 10-B shows a recommended evaluation sheet with criteria and rating points for A&E consultants where cost is not used as a rating factor. This format is not mandatory but is recommended in the interest of developing consistency among the hundreds of agencies and consultants operating in the State. The local agency should consult with the DLAE before making major changes to the suggested approach.

### **DEVELOP SCHEDULE FOR CONSULTANT SELECTION**

The contract administrator completes a contract schedule, including key dates for consultant selection activities, before the contract is advertised. The contract administrator must confirm target dates with all selection committee members before completing the schedule.

## **PREPARE REQUEST FOR PROPOSAL (RFP)**

The information required in a RFP includes the following:

- Description of project
- Scope of work
- Schedule of work
- Proposal format
- Method and criteria for selection

The RFP specifies the content of a proposal, the number of copies required, and the due date. A minimum of four weeks is usually allowed between the time the RFP is mailed and time that proposals must be submitted. More time may be required for complex contracts or projects.

Items typically required in a technical proposal include:

- Work plan (specify what is to be covered)
- Organization chart
- Schedule
- Staffing plan
- Staff resumes
- Names of consultant's project manager and the individual authorized to negotiate the contract on behalf of the consulting firm
- Information about the consultant's use of Disadvantaged Business Enterprises (DBEs)

## **ADVERTISE FOR CONSULTANTS**

The local agency advertises the availability of the RFP in a major newspaper of general circulation or technical publication of widespread circulation. Also the local agency shall identify and send the RFPs to organizations qualified to do the specified work as well as professional societies and recognized DBE organizations. In some cases, it may be desirable to advertise nationwide for a particular project or service.

## **ISSUE REQUEST FOR PROPOSAL**

The local agency shall issue the RFP to all consultants responding to the advertisement.

## **CONDUCT PROPOSERS CONFERENCE OR ANSWER WRITTEN QUESTIONS**

The local agency may allow for clarification of the RFP by inviting submittal of written questions or by conducting a proposers conference, or by doing both.

The local agency must mail responses to written questions to all consultants receiving an RFP. No response should be given to verbal questions submitted by telephone or in person.

If a proposers conference is to be held, the exact time and place must be specified in the RFP. Attendance at a proposers conference normally is not mandatory. However, consultants not attending the conference do not receive notes from the meeting.

## RECEIVE AND EVALUATE TECHNICAL PROPOSALS AND STATEMENTS OF QUALIFICATIONS

The contract administrator must verify that each proposal contains all forms and other information required by the RFP. If all required information is not provided, a proposal may be considered non-responsive and rejected without evaluation. Late submittals, submittals to the wrong location, or submittals with inadequate copies are considered non-responsive and shall be rejected. Submittal of additional information after the due date shall not be allowed.

The members of the consultant selection committee must evaluate each proposal in terms of the technical criteria which were listed in the RFP. The committee must also evaluate reference checks and other information that is gathered independently.

## DEVELOP FINAL RANKING AND NOTIFY CONSULTANTS OF RESULTS

The selection committee discusses and documents the strengths and weaknesses of each proposal and develops a final ranking of most qualified consultants. All consultants that submitted proposals must be informed about the final ranking of consultants. It is important that all competing consultants receive the same information.

## NEGOTIATE CONTRACT WITH TOP-RANKED CONSULTANT

The top-ranked consultant is requested to submit a cost proposal. The local agency negotiates a contract. The goal of negotiation is to agree on a final contract that delivers the services or products required at a fair and reasonable cost to the local agency. The independent cost estimate developed in advance by the local agency is an important basis for negotiation. A pre-award audit of the consultant's operations may be required (see Section 10.1 "General"). If so, detailed cost negotiations must not begin until after the audit report is received. Discussions on other aspects of the contract may occur concurrently with the preparation of the audit.

Items typically negotiated include:

- Work plan
- Schedule
- Products to be delivered
- Classification and experience level of personnel to be assigned
- Cost items, payments and fee

A consultant is awarded the contract only if it has either satisfied the intent for DBE participation or made a good-faith effort to do so (see Exhibit 10-I, "Bidder/Proposer DBE Participation Requirements and Instructions").

If the local agency fails to conclude an agreement with the top ranked consultant, a new negotiation is started with the next highest ranked consultant. If this new negotiation fails, the process is repeated until a contract is negotiated successfully.

Before executing the consultant agreement, the local agency must make a review to ensure that all Federal requirements have been met (see Exhibit 10-C, "Consultant Agreement Reviewers Checklist"). A copy of the completed checklist is signed by the contract administrator and retained in the project files.

## **10.5 CONSULTANT SELECTION USING THE ONE-STEP RFQ METHOD**

### **APPOINT CONSULTANT SELECTION COMMITTEE**

A consultant selection committee, with a minimum of three members, is appointed at the beginning of the consultant selection process. The committee reviews and scores the materials submitted by consultants in response to the RFQ, develops a short list of qualified consultants, interviews those consultants, and develops a final ranking of the most qualified consultants. Representation on the committee includes the contract administrator and a representative of the function upon which the work centers. Participation by a district representative is optional upon request of the local agency and agreement by the DLAE.

### **DEVELOP SCHEDULE FOR CONSULTANT SELECTION**

Before a contract is advertised, the contract administrator completes a contract schedule including key dates for consultant selection activities.

### **ADVERTISE FOR CONSULTANTS**

Advertisements may take one of two forms. The most common form of advertisement is publication of the RFQ. The RFQ shall contain sufficient project work information so that interested consultants can submit an appropriate Statement of Qualifications.

In the second approach, the local agency advertises the availability of the RFQ in a major newspaper of general circulation or technical publication of widespread circulation. RFQs shall also be sent to organizations qualified to do the specified work, to professional societies, and to recognized DBE organizations. In some cases, it may be desirable to advertise nationwide for a particular project or service.

### **RECEIVE/EVALUATE STATEMENTS OF QUALIFICATIONS AND DEVELOP SHORT LIST**

The first step in the evaluation process is to determine that each proposal contains all forms and other information required by the RFQ. Submittals may be considered non-responsive if all required information is not provided and rejected without evaluation. Late submittals, submittals to the wrong location and submittals with inadequate copies are considered non-responsive and shall be rejected. Submittal of additional information after the due date shall not be allowed.

The Consultant Selection Committee reviews the submitted Statements of Qualifications according to the published evaluation criteria and weighting factors. The committee makes an independent random check of one or more of the consultant's references. This check applies to major subcontractors also. The committee establishes a short list of consultants that it determines to be best qualified to perform the contract work. The short list includes enough qualified consultants to ensure that at least three consultants are interviewed.

## **NOTIFY CONSULTANTS OF SHORT LIST**

All consultants that submitted a Statement of Qualifications must be notified of the results of the review. The notification is to identify only those consultants that are to be requested to attend an interview.

## **INTERVIEW TOP-RANKED CONSULTANTS**

Each consultant to be interviewed is given a copy of the draft contract proposal defining the detailed project requirements. This should be sent with the initial notification of the interview.

Interviews are to be structured and conducted in a formal manner. Each consultant shall be allowed the opportunity to make a presentation if desired; however, a time limit should be specified.

Interview questions are prepared in advance. Two types of questions may be asked:

- Questions that are to be asked of all competing consultants
- Questions relating to each specific consultant, based upon the reference checks and the strengths and weaknesses identified during evaluation of the Statement of Qualifications

The agency can request competing consultants to bring additional information or examples of their work to the interviews if the additional information facilitates the interview or evaluation process. Additional information requested should be kept at a minimum, i.e., only that information required to select the most qualified consultant for the contract.

## **DEVELOP FINAL RANKING AND NOTIFY CONSULTANTS OF RESULTS**

The selection committee discusses and documents the strengths and weaknesses of each proposal and develops a final ranking of most qualified consultants. All consultants interviewed must be informed about the final ranking of consultants. It is important that all competing consultants receive the same information.

## **CONDUCT SCOPING MEETING**

The contract administrator meets with the selected consultant's project manager to review the project and to ensure that the consultant has a complete understanding of the work that is required. The consultant is shown as much material as is available regarding the project. Any technical questions regarding the project are answered completely for the consultant.

## **REQUEST COST PROPOSAL**

The first-ranked consultant is then asked to provide a cost proposal to perform work described in the draft contract and discussed at the scoping meeting. The work is to be performed according to conditions described in the draft contract using the payment method described therein. If the contract involves more than one project, the consultant must provide a separate cost proposal for each project in addition to a summary cost proposal for the total contract.

## NEGOTIATE CONTRACT WITH TOP-RANKED CONSULTANT

After the top-ranked consultant submits a cost proposal, the local agency negotiates a contract. The goal of negotiation is to agree on a final contract that delivers to the local agency the services or products required at a fair and reasonable cost. The independent cost estimate developed in advance by the local agency is an important basis for negotiations. A pre-award audit of the consultant's operations may be required (see Section 10.1). If so, detailed cost negotiations must not begin until after the audit report is received. Discussions on other aspects of the contract may occur concurrently with the preparation of the audit.

The items typically negotiated include:

- Work plan
- Schedule
- Products to be delivered
- Classification and experience level of personnel to be assigned
- Cost items, payments and fee

A consultant is awarded the contract only if he/she has either satisfied the intent for DBE participation or made a good-faith effort to do so (see Chapter 9, "Disadvantaged Business Enterprises" and Exhibit 10-I, "Bidder/Proposer DBE Participation Requirements and Instructions").

If the local agency fails to reach an agreement with the top ranked consultant, a new negotiation is started with the next highest ranked consultant. If this new negotiation fails, the process is repeated until a contract is negotiated successfully.

Lists of qualified consultants established through the RFQ process must be re-established at least once every 12 months to give new consultants the opportunity to qualify.

## 10.6 CONSULTANT SELECTION USING THE TWO-STEP RFQ/RFP METHOD

### COMBINED RFQ AND RFP

Selecting consultants using the Two-Step, RFQ/RFP method requires combining certain steps from each of the other two methods previously described.

The initial steps in this method (up to the development and notification of the short list) are the same as the steps followed when using the One-Step RFQ method. At this point, the consultants from the short list are issued a RFP. The remaining steps are the same as the later steps followed in the One-Step RFP method. The combination of these steps is indicated on the Flow Chart (see Flow Chart 10-1 "Selecting Consultants").

Because it is a combination of the One-Step RFQ and One-Step RFP methods, this method of consultant selection requires more work and time than the other two methods. Consequently, the combined RFQ/RFP method is recommended for use only when the scope of work is very complex or unusual.



## **10.7 COMPLETING THE PROJECT**

### **DEVELOP THE FINAL CONTRACT**

The contract administrator has responsibility to ensure that the final negotiated contract is complete and to verify that all required back-up documents have been provided. Copies of the contract are sent to the consultant for signature.

### **REVIEW OF LOCAL AGENCY ACTIONS**

Agreements between local agencies and consultants are not subject to Caltrans' approval to qualify for Federal reimbursement, but they still must meet all Federal requirements. Also, any questions raised during the pre-award audit shall be resolved before the local agency approves the contract. Federal-aid is contingent on meeting the Federal requirements and can be withdrawn if the procedures are not followed and documented. The files are to be maintained in a manner to facilitate future FHWA and/or Caltrans process reviews.

As specified in Section 10.4, the proposed consultant agreement must be reviewed before execution by the contract administrator and the "Consultant Agreement Reviewer's Checklist" (Exhibit 10-C) completed and signed. A copy of the signed documents must be retained in the project files

### **EXECUTE CONTRACT AND ISSUE NOTICE TO PROCEED TO CONSULTANT**

The contract administrator notifies the consultant when the contract is fully executed and issues a notice to proceed. Federal funds may not be used to reimburse the agency for consultant costs incurred before the "Authorization to Proceed" is issued nor for costs incurred prior to the execution of the contract.

### **ADMINISTER THE CONTRACT**

Project work begins as specified in the contract after the notice to proceed is issued to the consultant. Thereafter, the local agency manages and administers the contract to ensure that a complete and acceptable product is received on time, within standards, and within budget.

Contract administration activities ensure that contractual obligations are completed satisfactorily. Generally, these activities include:

- Monitoring project progress and compliance with contract requirements
- Receive, review and assess reports, plans and other required products
- Reviewing invoices and approving payments
- Record-keeping and reporting
- Controlling costs
- Identifying changes to the scope of work and preparation of amendments
- Completing performance evaluations

## **CLOSE OUT PROJECT**

Local agencies are encouraged to close-out consultant contracts quickly. If the contract was for preparation of PS&E, such close-outs are to be delayed until after physical construction of the project is completed. Waiting for project completion ensures the consultant's availability if problems arise or the need for change occurs.

After making final payment of consultant invoices, the local agency submits the invoice to Caltrans to complete Federal reimbursement for consultant activity.

## **PERFORMANCE EVALUATION**

The contract administrator evaluates the consultant's performance after the consultant's final report has been submitted and the contract administrator has conducted a detailed evaluation with the consultant's project manager.

## **PROJECT RECORDS**

For audit purposes, project records and documentation shall be kept for three years after payment of the final Federal voucher.

Among the records to be retained are the following:

- Copies of RFPs and RFQs
- Documentation of DBE efforts and participation
- Solicitation/advertisement records
- Identification of selection committee members
- Evaluation and ranking records
- Independent cost estimate
- Negotiations
- Pre-award audit when applicable
- Executed consultant contracts and amendments
- Construction oversight/progress meetings
- Progress and final payments
- Performance evaluation
- Consultant contract checklist

# **10.8 MISCELLANEOUS CONSIDERATIONS**

## **RETAINING A CONSULTANT AS CITY OR COUNTY ENGINEER**

A local agency may retain a qualified consultant as City Engineer or County Engineer. The retained consultant can be an individual or firm providing professional services. Eligibility for Federal reimbursement for these services requires the following:

- Compliance with the selection procedures specified in this chapter
- Existence of a contract between the local agency and the consultant specifying the services to be performed
- Designation as City Engineer or County Engineer
- Selection on an open and competitive basis within the last three years

If engineering services for a project are within the scope of the services described in the retained consultant's agreement, they may be performed by the person or firm designated as City Engineer or County Engineer. If the services are not within the scope, a new consultant agreement must be developed.

Retained consultants involved in the preparation of the request for proposals/qualifications may not compete for the resulting work.

## REVIEW AND APPROVAL OF AGREEMENTS

Proposed agreements for consultant services, including those for subcontracted work exceeding \$100,000, must be reviewed by the local agency to verify that:

- Appropriate conditions are included and objectionable features are deleted
- Compensation is fair and reasonable
- Work activities and schedules are consistent with the nature and scope of the project
- A pre-award audit is conducted when appropriate (see Section 10.1)

The "Consultant Agreement Reviewers Checklist" (Exhibit 10-C) and "Consultant Agreement Outline" (Exhibit 10-D) should be used to ensure that required documentation is provided.

A Cost Proposal (see "Sample Cost Proposal," Exhibit 10-H) must include costs of materials, direct salaries, payroll additions, other direct costs, indirect costs, fees and backup calculations.

Before approving an agreement for consulting services, the contract administrator must be satisfied that the consultant's organization is:

- Qualified to perform the services required
- In a position, considering other work commitments, to provide competent and experienced personnel to perform the services in the time allowed
- Fully apprised of all applicable Federal and State laws, including implementing regulations, design standards, specifications, previous commitments that must be incorporated in the design of the project, and administrative controls including those of the FHWA

The agreement must provide for a level of acceptability and a statement to the effect that the consultant is required to modify its work as necessary (to meet that level of acceptability as defined in the agreement).

The agreement shall provide for reviews at appropriate stages during performance of the work to determine if any changes or other actions are warranted. These reviews are to be made by the local agency.

The agreement shall also provide that the prospective consultant establish a working office at a place acceptable to the local agency.

The agreement shall provide that the consultant and its subcontractors shall maintain all books, documents, papers, accounting records, and other information pertaining to costs

incurred. Such materials must be available at their offices at reasonable times during the contract period. All such materials are to be available for inspection by Federal, State and local agency authorized representatives, and copies thereof shall be furnished if requested. Following final settlement of the contract accounts with the FHWA, such records and documents may be microfilmed at the option of the local agency, but in any event shall be retained for a three-year period after processing of the final voucher by the FHWA.

Agreements with consultants covered by this manual must not be approved by the local agency until the certifications shown in Exhibits 10-F, "Certification of Consultant" and 10-G, "Certification of Local Agency" are executed and incorporated in the agreement. The certifications shall be executed by a principal or authorized corporate official of the consultant and by a principal administrative officer of the governmental agency responsible for the selection of the consultant. It is essential these certifications be preserved in the project files.

## **SUPPLEMENTAL AGREEMENTS**

Supplemental agreements are required for modification in the terms of the original agreement to provide changes such as extra time, added work, or modification of payment. There is no prescribed format for supplemental agreements. They may take the form of letter-type agreements meeting the legal requirements of the local agency, clearly outlining the changes, and containing a mutually agreed upon method of compensation. Such agreements must conform to the requirements of this manual with regard to payment.

Supplemental agreements shall be approved by the local agency prior to the performance of the work. When public interest requires that work begin without delay, it may not be practicable to establish equitable compensation prior to commencing the work.

## **CONSTRUCTION ENGINEERING SERVICES**

A consultant may be utilized for periodic or full-time technical inspection of construction. Under Federal-aid regulations, however, the prime responsibility for general supervision of construction must remain with the local agency. The local agency must also ensure the work is performed in accordance with the approved PS&E. Therefore, a full-time, registered engineer employed by a public agency must be placed in charge of the project (he/she need not be assigned solely to that project).

The consultant's engineering responsibility generally are that of professional adviser to the local agency. The activities performed by the consultant are under the overall supervision of the local agency engineer. These operations may include construction surveys, foundation investigations, measurement and computation of quantities, testing of construction materials, checks of shop drawings, preparation of estimates and reports, and other inspection activities necessary to ensure the construction is being performed in accordance with the plans and specifications. The construction engineering consultant agreement defines the relative authorities and responsibilities of the full-time, publicly employed engineer in charge of the project and the consultant's inspection staff.

If the technical inspection consultant is giving professional assistance to the local agency's resident engineer, a formal consultant agreement must be executed which follows all of this chapter's requirements.

## ENGINEERING SERVICES UNDER \$100,000

When it is determined that engineering services in amounts less than \$100,000 are needed and Federal reimbursement will be sought, these services may be obtained through personal services agreements up to a limit of \$100,000 each. The \$100,000 is a cumulative limit for services provided by any individual consultant or consulting firm.

Personal service agreements can be used by a local agency during the preliminary engineering/environmental, right of way, design and construction phases of work to hire a consultant needed to complete the particular phase of work. Such services must be under the direction and control of the engineer in charge of the phase of work being conducted and must be for logical segments of the work.

Compensation for construction engineering services should be based on actual costs incurred plus a fixed fee, or in the case of individual compensation, on an agreed-upon, hourly or daily rate. Lump sum payments should not be used for construction engineering services.

For contracts under \$100,000, the following information must be approved by the local agency and retained in the project files:

- Explanation of the services needed and why they cannot be provided by the local agency
- Name and qualifications of the consultant who provide the services
- Documentation of the fees, showing the fees are within the prevailing range and are reasonable by comparative standards
- Copy of the agreement between the local agency and the consultant

## RETENTION CLAUSES

At the option of the local agency, a retention clause may be included in the consultant agreement. The usual retained amount is 5 percent, and appropriate securities on deposit may be substituted for the retention. Caltrans strongly recommends stipulating a retention in the consultant agreement.

## 10.9 REFERENCES

- 23 CFR 172.5
- 49 CFR 18.36
- 41 USC 403(11)
- 48 CFR 31
- OMB Circular A-110
- 23 CFR, Section 172
- Caltrans *Environmental Handbook*
- Government Code Sections 4525 through 4529.5
- 41 CFR 1-9.1
- California Labor Code, Section 1775
- 49 CFR 26, Appendix A
- Caltrans *Service Contracts Manual*

## EXAMPLE

### PREAWARD AUDIT REQUEST LETTER AND CHECKLIST

#### *Local Agency Letterhead*

Department of Transportation  
Audits and Investigations, MS 2  
Attention: External Audit Manager  
P.O. Box 942874  
Sacramento, CA 94274-0001

Date: \_\_\_\_\_  
(Federal Number)  
(Project Description)  
\_\_\_\_\_

Dear External Audit Manager:

Attached is a copy of the following information for proposed contract number \_\_\_\_\_ with  
(Consultant's Name, Address, Phone Number).

- \_\_\_\_\_ Proposed contract between the local agency and the consultant
- \_\_\_\_\_ Proposed cost proposal for prime consultant and all subconsultants
- \_\_\_\_\_ Name of local agency contact person, phone number and fax number

The subconsultants proposed for this contract are as follows; (List all Subconsultants Name, Address, Phone Number).

Please arrange a pre-award evaluation and forward a copy of the written report to us. Services to be performed under this contract are (describe work to be performed).

The (Local Agency Name) understands that any work with costs incurred prior to the approval of the "Authorization to Proceed" (E-76) is not eligible for Federal fund reimbursement.

Please notify us of the estimated completion date of the audit.

If you need further information, please contact (Name) at (Phone #).

Sincerely,

Signed \_\_\_\_\_  
Title \_\_\_\_\_  
Agency \_\_\_\_\_

Attachments: Proposed Contract  
Draft Cost Proposal(s)

cc: DLAE

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<b>SUGGESTED EVALUATION SHEET*</b>		
Criteria	Maximum Points	Rating
Understanding of the work to be done	25	
Experience with similar kinds of work	20	
Quality of staff for work to be done	15	
Capability of developing innovative or advanced techniques	10	
Familiarity with State and Federal procedures	10	
Financial responsibility	10	
Demonstrated DBE intent	10	
Total	100	

\*For projects other than “Architectural & Engineering” services, as defined in Section 10.1, cost is one of the criteria or may be the sole criterion.

The evaluation criteria and suggested maximum points shown above are not mandatory, but are recommended in the interest of maintaining consistency among the hundreds of agencies utilizing Federal funds.



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**CONSULTANT AGREEMENT REVIEWERS CHECKLIST****Project Identification/Location****I. SELECTION PROCEDURES ITEMS NEEDED FOR REVIEW**

- A. DESCRIPTION OF NEED FOR CONSULTANT** \_\_\_\_\_
- B. PUBLICATION OF RFP OR RFQ RECORDS** \_\_\_\_\_
- C. SOLICITATION RECORDS** \_\_\_\_\_
- D. EVALUATION CRITERIA** \_\_\_\_\_
- E. DOCUMENTATION OF SELECTION** \_\_\_\_\_
- F. EVALUATION OF DBE GOOD FAITH EFFORTS (WHEN APPLICABLE)** \_\_\_\_\_
- G. PLAN TO MONITOR WORK** \_\_\_\_\_

**II. CONSULTANT AGREEMENT****A. INTRODUCTION**

- 1. Date of agreement \_\_\_\_\_
- 2. Names, addresses, and other identifying data of agreeing parties \_\_\_\_\_
- 3. Location and description of project \_\_\_\_\_
- 4. Name of Contract Administrator \_\_\_\_\_

**B. AGREEMENT**

- 1. Type of work to be done
  - a) Consultant services \_\_\_\_\_
  - b) Right of Way \_\_\_\_\_
  - c) Subsurface investigations \_\_\_\_\_
  - d) Obligations of local agency to consultant \_\_\_\_\_
  - e) Conferences, visits to site, inspection of work \_\_\_\_\_
  - f) Checking of shop drawings \_\_\_\_\_
  - g) Consultant services during construction \_\_\_\_\_
  - h) Deliverables and number of copies \_\_\_\_\_
- 2. Time of beginning of contract \_\_\_\_\_
- 3. Payment methods \_\_\_\_\_
- 4. Record retention (three years) \_\_\_\_\_
- 5. Contract Cost Principles and Procedures (CFR 48, Federal Acquisition Regulation System, Chapter 1, Part 31) \_\_\_\_\_
  - a) Covenants Against Contingent Fees - Exhibit 10-D, [B6 (a)] & Exhibits 10-F & 10-G \_\_\_\_\_
  - b) Design Standards - Exhibit 10-D, [B6 (b)] \_\_\_\_\_
  - c) Documentation - Exhibit 10-D, [B6 (c)] \_\_\_\_\_
  - d) Ownership of Documents - Exhibit 10-D, [B6 (d)] \_\_\_\_\_
  - e) Patent Rights - Exhibit 10-D, [B6 (e)] \_\_\_\_\_
  - f) Copy Rights - Exhibit 10-D, [B6 (f)] \_\_\_\_\_
  - g) Changes in work - Exhibit 10-D, [B6 (g)] \_\_\_\_\_
  - h) Delays and Extensions - Exhibit 10-D, [B6 (h)] \_\_\_\_\_
  - i) Termination or Abandonment - Exhibit 10-D, [B6 (i)] \_\_\_\_\_

- j) Remedies - Exhibit 10-D, [B6 (j)] \_\_\_\_\_
- k) Disputes - Exhibit 10-D, [B6 (k)] \_\_\_\_\_
- l) Responsibility for Claims and Liability - Exhibit 10-D, [B6 (l)] \_\_\_\_\_
- m) General Compliance With Laws & Wage Rates - Exhibit 10-D, [B6 (m)] \_\_\_\_\_
- n) Subcontracting, Assignment and Transfer - Exhibit 10-D, [B6 (n)] \_\_\_\_\_
- o) Consultant's Endorsement on Plans, etc. - Exhibit 10-D, [B6 (o)] \_\_\_\_\_
- p) DBE Considerations - Section 10.1, Exhibit 10-D, [B6 (p)] and Exhibit 10-I, "Bidder/Proposer DBE Participation Requirements and Instructions." \_\_\_\_\_

**C. CONCLUSIONS (ACCEPTED LEGAL EXPRESSION, ETC.)** \_\_\_\_\_

**D. SIGNATURES** \_\_\_\_\_

**E. CERTIFICATIONS OF CONSULTANT AND AGENCY EXHIBITS 10 F & G** \_\_\_\_\_

**F. COST PRICE PROPOSAL - EXHIBIT 10-H** \_\_\_\_\_

\_\_\_\_\_  
**Contract Administrator**

\_\_\_\_\_  
**Date**

## CONSULTANT AGREEMENT OUTLINE

### A. INTRODUCTION

The introduction includes the following information:

#### 1. DATE OF AGREEMENT

#### 2. NAMES, ADDRESSES AND OTHER DATA IDENTIFYING AGREEING PARTIES

State the complete name and address of each party to the agreement, together with information with respect to whether the party is an individual, an agency of government, a partnership or a corporation. If a corporation is one of the parties, show the State of incorporation. Show the location of the office where the consultant's work will be available for inspection by local agency and State representatives. For the sake of brevity, a suitable short title, such as "State," "County," "Engineer" or "Consultant," is designated and defined for each of the parties and used throughout the remainder of the agreement.

#### 3. LOCATION AND DESCRIPTION OF THE PROJECT.

State the location and description of the project as precisely and as briefly as possible. Give the name of the project if one exist. If major structures are to be included, their approximate locations, lengths and types, if known, are to be shown.

#### 4. NAME OF CONTRACT ADMINISTRATOR

### B. AGREEMENT

#### 1. DESCRIPTION OF WORK TO BE DONE

##### a) Consultant Services

Detail based on the services to be furnished by the consultant. Nature and extent verified in the negotiations to make precise statements to eliminate subsequent uncertainties and misunderstandings. Describe acceptance criteria. Environmental documents are not considered complete until final FHWA approval. A signed Categorical Exclusion, Finding of No Significant Impact, or published Record of Decision is to be approved or completed by FHWA (see Chapter 6, "Environmental Procedures" of this manual).

##### b) Right of Way

State whether Right of Way requirements are to be determined and shown by the consultant; whether land surveys and computations with metes and bounds descriptions are to be made; and whether Right of Way plots are to be furnished.

c) Subsurface Investigations

State specifically whether or not the consultant has responsibility for making subsurface investigations. If borings or other specialized services are to be made by others under the supervision of the consultant, appropriate provisions are to be incorporated. Archaeological testing and data recovery guidance can be found in Chapter 8 of Caltrans' *Environmental Handbook*.

d) Local Agency Obligations

All data applicable to the project and in possession of the local agency or another agency or government that are to be made available to the consultant are referred to in the agreement. Any other assistance or services to be furnished to the consultant are to be stated clearly.

e) Conferences, Visits to Site, Inspection of Work

The agreement provides for conferences as needed, visits to the site and inspection of the work by representatives of the State or FHWA. Costs incurred by consultants for meetings subsequent to the initial meeting shall be included in the fee.

f) Checking Shop Drawings

For agreements requiring the preparation of construction drawings, make provision for checking shop drawings. Payment for checking shop drawings by the consultant may be included in the contract fee or provision may be made for separate payment.

g) Consultant's Services During Construction

The extent, if any, of the consultant's services during the course of construction is specified in the agreement, together with the method of payment for such services.

h) Number of Copies

The number of copies of papers or documents to be furnished, such as reports, brochures, sets of plans, specifications or Right of Way plots is specified. Provision may be made for payment for additional copies.

## **2. TIME OF BEGINNING AND COMPLETION**

A time must be set for beginning work under the agreement. Usually this is a given number of days after a letter of notification has been sent to the consultant. The time allowed for performing the work is specified; it should be reasonable for the kind and amount of services contemplated; and it is written into the agreement. It is desirable that Critical Path Method (CPM) networks be prepared and incorporated into the contract by reference.

## **3. PAYMENTS**

State the basis of payment for the services to be furnished. The services may be considered as a whole or by units. The agreement establishes a method of payment

as the work progresses or as each unit is completed, and for final settlement after all work is delivered, accepted, and approved. The agreement sets a maximum limit on the total amount payable.

#### **4. RECORD RETENTION**

The agreement states the period of time that the consultant's records shall be retained for inspection by the State, FHWA, or their duly authorized representatives. This time period must be at least three years after final payment to the consultant.

#### **5. COST PRINCIPLES**

The agreement must state that the Federal Acquisition Regulations in Title 48, CFR 31 are the governing factors regarding allowable elements of cost.

#### **6. MISCELLANEOUS PROVISIONS**

##### **a) Covenant Against Contingent Fees**

All Agreements for consultant services in which Federal funds are to participate shall contain the following clause:

"The Consultant warrants that he/she has not employed or retained any company or person, other than a bona fide employee working for the consultant, to solicit or secure this agreement, and that he/she has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or formation of this agreement. For breach or violation of this warranty, the Local Agency shall have the right to annul this agreement without liability, or at its discretion to deduct from the agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee."

##### **b) Design Standards**

The Agreement includes reference to the appropriate standards for design or other standards for work performance stipulated in the consultant agreement.

##### **c) Documentation**

Agreements, where appropriate, shall provide that the consultant document the results of the work to the satisfaction of the local agency and if applicable, the State & FHWA. This may include preparation of progress and final reports, plans, specifications and estimates, or similar evidence of attainment of the agreement objectives.

##### **d) Ownership of Documents**

The agreement provides that tracings, plans, specifications, and maps prepared or obtained under the terms of the agreement be delivered to and become the property of the local agency, and that basic survey notes and sketches, charts, computations, and other data prepared or obtained under such agreement shall be made available, upon request, to the local agency without restriction or limitation on their use.

When an agreement is for preliminary plans only, no commitment

should be stated or implied that would constitute a limitation of the subsequent use of the plans or ideas incorporated therein for preparation of construction plans.

e) Patent Rights

Applicable patent rights provisions described in 41 CFR 1-9.1 regarding rights to inventions shall be included in Agreements as appropriate.

f) Copyrights

The local agency may permit copyrighting reports or other agreement products. If copyrights are permitted, the agreement shall provide that the FHWA shall have the royalty-free non-exclusive and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use, the work for government purposes.

g) Changes in Work

The agreement contains provisions that permit mutually acceptable changes in the scope, character, or complexity of the work if such changes become desirable or necessary as the work progresses. A method should be established for making adjustments to the basis of payment and to the time for performance of the work. Provision are made for special cases where it is essential that the extra work be performed immediately with execution of a supplemental agreement covering the changes as soon as possible.

h) Delays and Extensions

The agreement provides for an appropriate extension of time in case of unavoidable delays and for consideration of corresponding warranted adjustments in payment.

i) Termination or Abandonment

A procedure covering, among other things, the ownership of work completed or partially completed, including the basis of payment, is established in the event of termination of the agreement prior to completion of the work. Conditions for termination due to default and circumstances beyond the control of the contractor are included.

j) Remedies

Provision(s) are included allowing administrative, contractual, or legal remedies for violation or breach of contract terms, citing appropriate sanctions and penalties.

k) Disputes

The agreement provides for a procedure to resolve any dispute concerning a question of fact in connection with the work not settled by agreement between the parties. Such procedures should conform to the practice followed by the local agency in resolving disputes in other contractual matters.

## l) Responsibility for Claims and Liability

The consultant should be required to save harmless the local agency or other agency of government from all claims and liability due to his/her negligent acts or the negligent acts of his/her subcontractors, agents or employees.

## m) General Compliance with Laws and Wage Rates

The consultant shall be required to comply with all Federal, State and local laws and ordinances applicable to the work. This includes compliance with prevailing wage rates and their payment in accordance with California Labor Code, Section 1775.

## n) Subcontractors, Assignment and Transfer

Consultant services are considered to be a personal relationship between client and principal; therefore, agreements in which participating Federal funds are furnished shall contain a clause expressly prohibiting the subcontracting, assignment or transfer of any of the work except as otherwise provided for in the executed agreement. All contracts shall provide that subcontracts exceeding \$25,000 in cost shall contain all required provisions of the prime contract.

## o) Consultant's Endorsement on PS&amp;E/Other Data

The responsible consultant/engineer shall sign all plans, specifications, estimates (PS&E) and engineering data furnished by him/her and where appropriate, indicate his/her registration number.

## p) Disadvantaged Business Enterprise Considerations

Consultants must give consideration to DBE firms as specified in 23 CFR 172.5(e) and Appendix A to Part 26 of 49 CFR, in Exhibit 10-I. Evidence must be presented of "good faith" effort, when applicable.

## C. CONCLUSION

The concluding clause may be any one of the many accepted legal expressions commonly used for that purpose.

## D. SIGNATURES

## E. CERTIFICATIONS

(See Exhibits 10-F and 10-G)

## F. COST PRICE PROPOSAL

(See Exhibit 10-H)



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## SAMPLE PAYMENT CLAUSES\*

### COST-PLUS-FIXED FEE

The basis of payment for the services provided under this agreement shall be cost-plus-a-fixed fee.

1. The local agency shall reimburse the consultant for actual costs (including labor costs, employee benefits, overhead and other direct costs) incurred by the consultant in performance of the work, in an amount not to exceed \$\_\_\_\_\_, exclusive of any fixed fee. Actual costs shall not exceed the estimated wage rates and other costs set forth in the consultant's proposal.
2. In addition to the costs referred to in paragraph 1 of this article, the local agency shall pay the consultant a fixed fee of \$\_\_\_\_\_. Said fixed fee shall not be altered unless there is a significant alteration in the scope, complexity or character of the work to be performed.
3. The Consultant shall be reimbursed for actual travel expenses incurred in the performance of this work, including the use of private cars at the rate of \_\_\_\_\_ cents per mile, while traveling away from consultant's headquarters which is hereby designated as \_\_\_\_\_. In addition, consultant's personnel shall be reimbursed for per diem expenses at a rate not to exceed that currently authorized for State employees under State Department of Personnel Administration rules.
4. Total expenditures made under this agreement, including the fixed fee, shall not exceed the sum of \$\_\_\_\_\_.

### LUMP SUM

The basis of payment for the services provided under this agreement shall be lump sum.

1. Pursuant to satisfactory completion of this agreement, a lump sum payment of \$\_\_\_\_\_including all expenses incurred will be made to the consultant.
2. The above lump sum payment includes salary, fringe benefits, overhead, profit and all other expenses incurred by the consultant.

\*The other methods of payment are not addressed here.

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## CERTIFICATION OF CONSULTANT

I HEREBY CERTIFY that I am the \_\_\_\_\_ and duly authorized representative of the firm of \_\_\_\_\_ whose address is \_\_\_\_\_, and that, except as hereby expressly stated, neither I nor the above firm that I represent have:

- (a) employed or retained for a commission, percentage, brokerage, contingent fee, or other consideration, any firm or person (other than a bona fide employee working solely for me or the above consultant) to solicit or secure this agreement; nor
- (b) agreed, as an express or implied condition for obtaining this contract, to employ or retain the services of any firm or person in connection with carrying out the agreement; nor
- (c) paid, or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for me or the above consultant) any fee, contribution, donation, or consideration of any kind for, or in connection with, procuring or carrying out this agreement.

I acknowledge that this Certificate is to be made available to the California Department of Transportation (Caltrans) in connection with this agreement involving participation of Federal-aid Highway funds, and is subject to applicable State and Federal laws, both criminal and civil.

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Signature)

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## CERTIFICATION OF LOCAL AGENCY

I HEREBY CERTIFY that I am the \_\_\_\_\_ of the  
\_\_\_\_\_  
(local agency) \_\_\_\_\_, and that the consulting firm of  
\_\_\_\_\_ or its representative has not been required (except  
as herein expressly stated), directly or indirectly, as an express or implied condition in connection  
with obtaining or carrying out this Agreement to:

- (a) employ, retain, agree to employ or retain, any firm or person; or
- (b) pay or agree to pay, to any firm, person or organization, any fee, contribution, donation, or  
consideration of any kind.

I acknowledge that this Certificate is to be made available to the California Department of Transportation  
(Caltrans) in connection with this Agreement involving participation of Federal-aid Highway funds, and  
is subject to applicable State and Federal laws, both criminal and civil.

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Signature)

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**SAMPLE COST PROPOSAL (EXAMPLE #1)**

Contract No. \_\_\_\_\_

Date \_\_\_\_\_

Consultant \_\_\_\_\_

**DIRECT LABOR**

Classification	Name	Range	Hours	Initial Hourly Rate	Total
Project Manager	_____	_____	_____	@ _____	\$ _____
Highway Engineer	_____	_____	_____	@ _____	\$ _____
	_____	_____	_____	@ _____	\$ _____
Bridge Engineer	_____	_____	_____	@ _____	\$ _____
	_____	_____	_____	@ _____	\$ _____
Technician	_____	_____	_____	@ _____	\$ _____
Project Manager	_____	_____	_____	@ _____	\$ _____
	_____	_____	_____	@ _____	\$ _____
	_____	_____	_____	@ _____	\$ _____
	_____	_____	_____	@ _____	\$ _____

Subtotal Direct Labor Costs \$ \_\_\_\_\_  
 Anticipated Salary Increases \$ \_\_\_\_\_  
 Total Direct Labor Costs \$ \_\_\_\_\_

Fringe Benefits	Rate	Total
	_____ %	\$ _____
Total Fringe Benefits		\$ _____

Indirect Costs		
Overhead	_____ %	\$ _____
General and Administrative	_____ %	\$ _____
Total Indirect Costs		\$ _____

FEE (Profit)	\$ _____
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**OTHER COSTS**

Travel Costs	\$ _____
Equipment and Supplies (Itemize)	\$ _____
Other Direct Costs (Itemize)	\$ _____

Total Other Costs	\$ _____
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Subcontractor Costs (attach detailed cost estimate for each subcontractor)	\$ _____
----------------------------------------------------------------------------	----------

TOTAL COST	\$ _____
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	Fringe Benefit %		Overhead %		General Administration %		Combined %
NORMAL	+		+		=		
OVERTIME	+		+		=		
			FEE %				

## CALCULATION INFORMATION

[illegible]

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- December 15, 2000

**BIDDER/PROPOSER DBE PARTICIPATION  
REQUIREMENTS AND INSTRUCTIONS**(For Local Agency Contracts Fully Or Partially Funded With Federal Funds)

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This project is subject to Part 26, Title 49, Code of Federal Regulations entitled "Participation by Disadvantaged Business Enterprises (DBE) in Department of Transportation Financial Assistance Programs." Bidders/proposers shall be fully informed of the requirements of the regulations and the [Local Agency's] Disadvantaged Business Enterprise (DBE) program developed pursuant to the regulations.

**DEFINITIONS**

A DBE must be a small business concern as defined pursuant to the Small Business Act and Small Business Administration (SBA) regulations. A firm is not an eligible DBE in any Federal fiscal year if the firm (including its affiliates) has had average annual gross receipts, as defined by SBA regulations (see 13 CFR 121.402), over the firm's previous three fiscal years, in excess of \$16.6 million.

A DBE is a for profit small business concern that is:

1. At least 51% owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation (publicly- owned business), at least 51% of the stock is owned by one or more such individuals and
2. Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

**AWARD AND SUBSTITUTION**

Award of this contract will be to the lowest responsive and responsible bidder/proposer or to the most qualified Architectural and Engineering (A&E) firm whose proposal complies with all the requirements prescribed and who has met the goal for DBE participation or demonstrated, to the satisfaction of the [Local Agency], that the bidder/proposer has documented adequate good faith efforts to do so as required by these instructions. Failure to do so will be cause for rejection.

If awarded the contract, Contractor may not substitute a person as a subcontractor in place of the DBE subcontractor listed in the original bid/proposal without the written authorization of the contract manager pursuant to the term of the contract.

Failure to obtain approval may result in payment being denied.

**COMMERCIALLY USEFUL FUNCTION**

A DBE must perform a commercially useful function, i.e. must be responsible for the execution of a distinct element of the work and must carry out its responsibility by actually performing, managing and supervising the work or in accordance with the factors described in Section 26.55, 49 CFR Part 26 for materials, supplies or trucking.

**DBE PARTICIPATION**

A bidder/proposer in order to be considered a responsible and responsive bidder must make good faith efforts to meet the goal established for the contract. The bidder/proposer can meet this requirement in either of two ways:

- 1) meet the goal, documenting commitments for participation by DBE firms; or
- 2) if the goal is not met, the bidder/proposer must document adequate good faith efforts.

A bidder/proposer (prime contractor) who is not a certified DBE bidder/proposer will be required to document one or a combination of the following:

1. The bidder/proposer will meet the goal through work performed by DBE subcontractors, suppliers or trucking companies.
2. The bidder/proposer, prior to bidding, made a adequate good faith efforts to meet the goal.

A certified DBE may participate as a prime contractor, subcontractor, joint venture partner, or as a vendor of material or supplies or as a trucking company.

A certified DBE bidder/proposer not bidding as a joint venture with a non-DBE, will be required to document one or a combination of the following:

1. The DBE bidder/proposer will meet the goal by performing work with its own forces:
2. The bidder/proposer will meet the goal through work performed by DBE subcontractors, suppliers or trucking companies.

3. The bidder/proposer prior to bidding, made adequate good faith efforts to meet the goal.

A DBE joint venture partner must be responsible for specific contract items of work, or portions thereof. Responsibility means actually performing, managing and supervising the work with its own forces.

The DBE joint venture partner must share in the capital contributions, control, management, risks and profits of the joint venture. The DBE joint venture must submit the joint venture agreement with the bid or proposal or the DBE participation information form attached to these instructions.

If the bidder/proposer documents adequate good faith efforts to meet the goal, the award cannot be denied on the basis that the bidder/proposer failed to meet the goal.

The bidder/proposer (prime contractor) shall list only one subcontractor for each portion of work as defined in their bid/proposal.

Any dollar amount of work, service or supplies proposed for DBE participation can only be counted once. That is, any further subcontracting or spending for DBE work, service or supplies already credited once for DBE participation cannot be counted again.

DBEs must be certified by the Caltrans Civil Rights Program or a participating California local agency, which has a reciprocal agreement with Caltrans and which certifies in conformance with 49 CFR, Part 26 regulations, by the Invitation for Bid (IFB) opening date or by the Request for Proposal (RFP) or Architectural and Engineering (A&E) contract Statement of Qualification (SOQ) due date before credit may be considered toward meeting the DBE goal.

Firms that are self-certified as DBEs are not eligible for DBE credit.

A prime contractor who is a certified DBE is eligible to claim all of the work it performs in the contract toward the goal except that portion of the work to be performed by non-DBE subcontractors.

Credit for materials or supplies purchased from DBEs will be as follows:

1. If the materials or supplies are obtained from a DBE manufacturer, 100 percent of the cost of the materials or supplies will count toward the DBE goal.

NOTE: A DBE manufacturer is a firm that operates or maintains a factory or establishment that

procedures, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.

2. If the materials or supplies are purchased from a DBE regular dealer, 60 percent of the cost of the materials or supplies will count toward the DBE goal.

**NOTES:**

1) A DBE regular dealer is a firm that owns, operates or maintains a store, warehouse or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock and regularly sold or leased to the public in the usual course of business.

2) To be a DBE regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. A person may be a DBE regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone or asphalt without owning, operating or maintaining a place of business as provided in this paragraph if the person owns and operates distribution equipment for the products.

3) Any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract by contract basis.

4) Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not DBE regular dealers within the meaning of this paragraph.

5) Credit for materials or supplies purchased from a DBE which is neither a manufacturer nor a regular dealer will be limited to the entire amount of fees or commission charged for assistance in the procurement of the materials and supplies or fees or transportation charges for the delivery of materials or supplies required on a job site, provide fees are reasonable and not excessive as compared with fees charged for similar services. The cost of materials or supplies are not counted toward the DBE goal in this instance.

Credit for DBE trucking companies will be as follows:

1. The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract and there cannot be a contrived

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**Bidder/Proposer DBE Participation Requirements and Instructions**

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arrangement for the purpose of meeting DBE goals.

2. The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract.

3. The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.

4. The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee provides on the contract. The DBE may also lease trucks from a non-DBE firm, including an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit only for the fee or commission it receives as a result of the lease arrangement.

5. The DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by a DBE.

6. A lease must indicate that the DBE has exclusive use and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck.

7. Leased trucks must display the name and identification number of the DBE.

**SUBMISSION OF DBE INFORMATION**

To be eligible for award of the contract, bidders or proposers must either have met the DBE goals or have provided documentation to establish that prior to bid or cost proposal submittal, the bidder or proposer has made adequate good faith efforts to do so. Final determination of goal attainment or good faith effort by the bidder or proposer will be at the [Local Agency's] discretion.

The required DBE information shall be submitted on the DBE Participation Exhibit 15-G attached to these instructions.

It is the bidder/proposer's responsibility to make enough work available to DBEs and to select those portions of the work or material needs consistent with the available DBEs to meet the goal.

It is the responsibility of the bidder/proposer to verify that DBEs are certified.

Bidders/proposers are cautioned that even though their submittal indicates they will meet the stated DBE goal, their submittal should also include their adequate good faith efforts information along with their DBE goal information to protect their eligibility for award of the contract in the event the [Local Agency], in its review, finds that the goal has not been met.

**The bidders/proposers DBE information shall include:**

1) The names of DBE firms that will participate in the contract with a complete description of work or supplies to be provided by each DBE and the dollar value of each proposed DBE transaction.

2) A written confirmation from each DBE that is participating in the contract. A copy of the DBEs quote will serve as written confirmation that the DBE is participating in the contract.

3) When 100 percent of a contract item of work is not to be performed or furnished by a DBE, a description of the exact portion of that work to be performed or furnished by that DBE shall be included in the DBE information including the planned location of that work.

4) The work that a DBE prime contractor has committed to be performed with its own forces as well as the work that it has committed to be performed by DBE subcontractors, suppliers and trucking companies will be required.

**GOOD FAITH EFFORTS**

The information necessary to establish the bidder/proposer's adequate good faith efforts to meet DBE goal should include:

1. The names and dates in each publication which a request for DBE participation for this contract was placed by the bidder/proposer.

2. The names and dates of written notices sent to certified DBEs soliciting bids for this project and the dates and methods used for following up initial solicitations to determine with certainty whether the DBEs were interested.

3. The items of work which the bidder/proposer made available to DBE firms, including, where appropriate, any breaking down of the contract work items (including those items normally performed by the bidder with its own forces) into

economically feasible units to facilitate DBE participation.

Note: It is the bidder/proposer's responsibility to demonstrate that sufficient work to meet the DBE goal was made available to DBE firms.

4. The names, addresses, and telephone numbers of rejected DBE firms, the firms selected for that work, and the reasons for the bidder/proposer's choice.

5. Efforts made to assist interested DBEs in obtaining bonding, lines of credit or insurance, and any technical assistance or information related to the plans, specifications and requirements for the work which was provided to DBEs.

6. Efforts made to assist interested DBEs in obtaining necessary equipment, supplies, materials or related assistance or services, excluding supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate.

7. The names of agencies contacted to provide assistance in contacting, recruiting and using DBE firms.

8. Any additional data to support a demonstration of good faith efforts.

Note: The Caltrans Civil Rights Program maintains a website, which includes a directory of certified DBE firms at: [www.dot.ca.gov/hq/bep](http://www.dot.ca.gov/hq/bep).

#### **RIGHT OF ADMINISTRATIVE CONSIDERATION**

If the apparent successful bidder/proposer has failed to meet the DBE requirements by failing to document it has obtained enough DBE participation to meet the goal; or did not succeed in documenting adequate good faith efforts, the bidder/proposer has five (5) calendar days after notification by the [Local Agency] to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so.

Written documentation must be submitted to:  
[Local Agency]  
[Local Agency's address]  
Phone:  
Fax:

A written decision on reconsideration will be issued within \_\_\_\_\_ days of receipt of the request.

**SAMPLE  
DBE PARTICIPATION REQUIREMENTS**

**This information is not intended to constitute an entire contract. The information contained herein is only a sample of clauses needed for DBE participation.**

**Use the following Article for contracts with no DBE goals specified. Delete the Articles after this.**

**ARTICLE \_\_\_\_\_ DBE PARTICIPATION REQUIREMENTS**

**A. Disadvantaged Business Enterprise (DBE) Participation (Without Goals)**

1. The [Local Agency] has established no goals for the participation of DBE for this contract.  
However, the Contractor shall be fully informed respecting Part 26, Title 49, Code of Federal Regulations, which is incorporated by reference, and is urged to obtain DBE participation should a clearly defined portion of the work become available.
2. It is the policy of the [Local Agency] that certified DBE firms shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with federal funds. The Contractor shall ensure that certified DBE firms, as defined in said Code of Federal Regulations, have the maximum opportunity to participate in the performance of this contract and shall take all necessary and reasonable steps, as set forth in said Part 26, for such assurance. The Contractor shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of subconsultant. Failure to carry out the requirements of this paragraph shall constitute a breach of contract and may result in termination of this contract or such other remedy the [Local Agency] may deem appropriate.
3. If DBE participation is obtained, the Contractor shall maintain records of all subconsultant agreements entered into with DBE subconsultants and records of materials purchased from DBE suppliers. Such records shall show each subconsultant's and vendor's name and address and the actual dollars paid to each. Upon completion of the contract, a summary of these records shall be prepared, certified correct and submitted on the form "FINAL REPORT - UTILIZATION OF DISADVANTAGED BUSINESS ENTERPRISES (DBE), FIRST - TIER SUBCONTRACTORS",

or equivalent, by the Contractor or his authorized representative to the [Local Agency]'s Contract Manager showing total dollars paid to each DBE subconsultant and supplier.

4. Any DBE firm working as a subconsultant under this contract must be responsible for the execution of a distinct element of the work and must carry out its responsibility by actually performing, managing, and supervising the work.
5. The Contractor shall make every reasonable effort to replace a certified DBE firm that is unable to perform the provisions of this contract with another certified DBE firm.

**Use the remainder of these Articles for contracts with DBE goals specified.**

## **ARTICLE \_\_\_\_\_ DBE PARTICIPATION REQUIREMENTS**

### **A. DBE Participation Requirements and Regulations General**

**The DBE participation for this contract is \_\_\_\_\_percent.**

The Contractor shall carry out applicable requirements of 49 CFR, Part 26, of the Code of Federal Regulations, entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," in the award and administration of DOT-assisted contracts. The regulations in their entirety are incorporated herein by reference. The Contractor shall not discriminate on the basis of race color, national origin or sex in the performance of this contract.

Noncompliance by the Contractor with the requirements of the regulations is a material breach of this contract and may result in termination of the contract or other such appropriate remedy as the [Local Agency] deems appropriate.

The Contractor shall include the following in each subcontract the Contractor signs with a subcontractor:

1. A subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract.
2. The subcontractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this contract.

3. Contractors shall include in their subcontracts, language providing the use of appropriate alternative dispute resolution mechanisms to resolve payment disputes.

## **B. Performance of DBE Contractors, Subcontractors and Suppliers**

**Delete this paragraph if the Prime Contractor is not a DBE.**

DBE prime contractors must perform at least 30 percent of the total cost of this contract with their own work force.

DBE subcontractors shall perform the work and supply the materials for which they have been listed in the Contractor's response to the contract award requirements in Exhibit 15-G, "Local Agency - Bidder DBE – Information" of the *Local Assistance Procedures Manual* (LAPM), attached, unless the Contractor has received prior written authorization to perform the work with other forces or to obtain the materials from other sources as set forth in Paragraph G, "DBE Substitution and Additions", of this Article.

## **C. Prompt Payment to DBE and NonDBE Contractors**

The Contractor shall not be entitled to any payment for the work or material, unless it is performed or supplied by the listed subcontractors (DBE or nonDBE), or by the Contractor's own forces, pursuant to prior written authorization of the Contract Manager. This is the case even if other contract work is not completed and has not been accepted in conformance with the terms of the contract by the State.

**Delete the Following Paragraph if there are No Trucking Company Subcontractors**

Prior to the fifteenth of each month, the Contractor shall submit documentation to the Contract Manager showing the amount paid to DBE trucking companies listed in the Contractor's DBE information. This monthly documentation shall indicate the portion of the revenue paid to DBE trucking companies which is claimed toward DBE participation. The Contractor shall also obtain and submit documentation to the Contract Manager showing the amount paid by DBE trucking companies to all firms, including owner-operators, for the leasing of trucks. The DBE who leases trucks from a nonDBE is entitled to credit only for the fee or commission it receives as a result of the lease arrangement. The records must confirm that amount of credit claimed toward DBE participation conforms with Paragraph J of this Article.



The Contractor shall also obtain and submit documentation to the Engineer showing the truck number, owner's name, California Highway Patrol CA number and if applicable, the DBE certification number of the owner of the truck for all trucks used during that month for which DBE participation will be claimed. This documentation shall be submitted on Exhibit 16-Z, "Monthly DBE Trucking Verification" of the LAPM.

The Contractor shall pay all DBE subcontractors and nonDBE subcontractors for satisfactory performance of their contracts within ten (10) days from receipt of each payment from the [Local Agency] made to the Contractor.

**D. Prompt Payment Progress Pay Retention to DBE and NonDBE Subcontractors**

The Contractor shall return all moneys withheld in retention from the subcontractor within 30 days after receiving payment for work satisfactorily completed, even if other contract work is not completed and has not been accepted in conformance with the terms of the contract. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to the Contractor or subcontractor in the event of a dispute involving late payment or nonpayment to the Contractor or deficient subcontract performance or noncompliance by a subcontractor.

**E. DBE and NonDBE Subcontractor Payment Records**

The Contractor in addition to maintaining records showing the name and business address of each first tier subcontractor, shall also show the name and business address of every DBE subcontractor, DBE vendor of materials and if applicable, DBE trucking company, regardless of tier. The records shall show the date of payment and the total dollar figure paid to all DBE firms. DBE prime contractors shall also show the date of work performed by their own forces along with the corresponding dollar value of work.

Upon completion of the contract, a summary of these records shall be prepared on Exhibit 17-F, "Final Report Utilization of Disadvantaged Businesses" of the LAPM and certified correct by the Contractor or the Contractor's authorized representative, and shall be furnished to the Contract Manager. The Exhibit shall be furnished to the Contract Manager with the final invoice. Failure to provide the summary of DBE payments with the final invoice will result in the invoice being in dispute until the report is received.

**F. Penalty Assessed for Failure to Provide Subcontractor Payment Records**

\$\_\_\_\_\_ (\$10,000) will be withheld from payment if Exhibit 17-F, “Final Report Utilization of Disadvantaged Businesses” of the LAPM is not submitted. The amount will be paid to the Contractor when the form is submitted.

**G. DBE Substitutions or Additions**

The Contractor may not substitute, or terminate for convenience a subcontractor, a supplier or— if applicable— a trucking company, listed in the original bid/proposal without the prior written approval of the Contract Manager. However, the Contractor may add a firm to perform work originally planned to be done by the Contractor's own forces.

The Contractor must make an adequate good faith effort to find another certified DBE subcontractor to substitute for the original DBE. The Contractor will be required to make good faith efforts to replace the original DBE subcontractor with another DBE subcontractor to the extent needed to meet the contract goal.

The requirement that DBEs must be certified by the bid opening date does not apply to DBE substitutions or additions after award of the contract. DBEs must be certified at the time of the substitution or addition.

Contractors shall submit requests for substitution in writing to the Contract Manager. Authorization to use other subcontractors or suppliers may be requested for the following reasons:

1. The listed DBE, after having had a reasonable opportunity to do so, fails or refuses to execute a written contract, when such written contract, based upon the general terms, conditions for this contract or on the terms of such subcontractor's or supplier's written bid, is presented by the Contractor.
2. The listed DBE becomes bankrupt or insolvent.
3. The listed DBE fails or refuses to perform the subcontract or furnish the listed materials.
4. The Contractor stipulated that a bond was a condition of executing a subcontract and the listed DBE subcontractor failed or refuses to meet the bond requirements of the contract.
5. The listed DBE was the result of an inadvertent clerical error. The Contractor must have asserted a claim of inadvertent clerical error in listing the subcontractor within two working days after the bid

- opening and copies of that notice to both the subcontractor he or she claims to have listed in error and intended subcontractor who had bid to the Contractor prior to bid/proposal opening.
6. The listed DBE was not licensed as required by the State of California Contractor's Licensing Board or failed to have the required permits or licenses as required by Federal, State or Local governmental jurisdictions.
  7. The work performed by the listed subcontractor is substantially unsatisfactory and is not in substantial conformance with the scope of work to be performed, or the subcontractor is substantially delaying or disrupting the progress of the work.
  8. When the listed DBE is ineligible to work on a public works project pursuant to Section 1777.1 or 1777.7 of the Labor Code.
  9. When it is in the best interest of the Local Agency.

Prior to approval of the Contractor's request for substitution to the Contract Manager, the Contractor shall give notice in writing to the listed DBE subcontractor of the Contractor's request to substitute and the reasons for the request. The notice shall be served by certified or registered mail to the last known address of the subcontractor. The listed subcontractor who has been so notified, shall have five working days within which to submit written objections to the substitution to the Contract Manager. Failure to respond to a written objection shall constitute the listed subcontractor's consent to the substitution.

#### **H. Termination of a DBE**

In conformance with Federal DBE regulation Sections 26.53(f)(1) and 26.53(f)(2), Part 26, 49 CFR, the Contractor shall not:

1. Terminate for convenience a listed DBE subcontractor and then perform that work with its own forces (personnel), or those of an affiliate, unless the Contractor has received prior written authorization from the Contract Manager to perform the work with other forces or to obtain materials from other sources
2. If a DBE subcontractor is terminated or fails to complete its work for any reason, the Contractor will be required to make good faith efforts to replace the original DBE subcontractor with another DBE subcontractor to the extent needed to meet the contract goal.

**I. DBE Certification Status**

If a DBE subcontractor is decertified during the life of the contract, the decertified subcontractor shall notify the Contractor in writing with the date of decertification. If a subcontractor becomes a certified DBE during the life of the contract, the subcontractor shall notify the Contractor in writing with the date of certification.

Upon completion of the contract, the Contractor shall complete Exhibit 17-F, "Final Report Utilization of Disadvantaged Businesses" of the LAPM, indicating the DBEs certification status and shall be signed and certified correct by the Contractor. The certified form shall be furnished to the Contract Manager within 30 days from the date of completion of the contract.

**J. DBE Eligibility Toward Goal**

The dollar value of work performed by **a DBE is credited/counted toward the goal only after the DBE has been paid.**

**Delete the following paragraph if the prime contractor is not a DBE**

**Credit for DBE Prime Contractors**

The prime contractor who, is a certified DBE, is eligible to claim the prime contractor's work toward the goal.

**Credit for Material or Supplies**

Credit for materials or supplies purchased from DBEs will be as follows:

If the materials or supplies are obtained from a DBE manufacturer, 100 percent of the cost of the materials or supplies will count toward the DBE goal.

If the materials or supplies purchased from a DBE regular dealer, 60 percent of the cost of the materials or supplies will count toward the DBE goal.

Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not DBE regular dealers within the meaning of this paragraph.

Credit for materials or supplies purchased from a DBE which is neither a manufacturer nor a regular dealer will be limited to the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies, provided the fees are reasonable and not excessive as compared with fees charged for similar services.

**Delete the following paragraph if there are no trucking company subcontractors**

Credit for DBE trucking companies will be as follows:

The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible. There cannot be a contrived arrangement for the purpose of meeting the DBE goal.

The DBE must itself own and operate at least one fully licensed, insured and operational truck used on the contract.

The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.

The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.

The DBE may also lease trucks from a nonDBE firm, including an owner-operator. The DBE who leases trucks from a nonDBE is entitled to credit only for the fee or commission it receives as a result of the lease arrangement. The DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by the DBE.

For the purposes of this paragraph, a lease must indicate that the DBE has exclusive use and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.

## AUDIT DISPOSITION

Date: \_\_\_\_\_

Agency Name: \_\_\_\_\_

Federal Project Number: \_\_\_\_\_

The following information documents the disposition of the required preaward (prenegotiation) audit prescribed in 23 CFR 172.5 (c). This form shall be completed for each consultant contract with participating State or Federal-aid highway funds, that exceeds \$250,000 and for contracts less than \$250,000 where:

- There is insufficient knowledge of the consultant's accounting system.
- There is previous unfavorable experience regarding the reliability of the consultant's accounting system.
- The contract involves procurement of new equipment or supplies for which cost experience is lacking.
- A consultant contractor has been designated by the State or Federal government as a high-risk recipient.

Check appropriate box:

### Caltrans Performs Preaward Audit

- ☐ Caltrans' Audits and Investigations performed the preaward audit and informed the local agency of its findings. The local agency resolved any outstanding issues and found the consultant satisfactory.

### Local Agency (or hired CPA) Performs Preaward Audit

- ☐ Preaward audit completed. Consultant found satisfactory.
- ☐ A courtesy copy of the completed preaward audit was mailed to Caltrans' Audits and Investigations on \_\_\_\_\_ (date)\_\_\_\_\_.

\_\_\_\_\_  
Signature of local agency financial/auditing officer

Title \_\_\_\_\_

Distribution: 1) DLAE  
2) Project Files

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**EXAMPLE****PREAWARD AUDIT NOTIFICATION LETTER***Local Agency Letterhead*

To: (External Audit Manager Name)  
External Audit Manager  
Caltrans, Audits & Investigations, M.S. 2  
P.O. Box 942874  
Sacramento, CA 94274-0001

Date:  
Federal Number:  
Project Description:

Dear (External Audit Manager Name):

We are executing the preaward audit and have contracted with the CPA firm of \_\_\_\_\_ to perform the work. The audit will be conducted following Generally Accepted Government Auditing Standards. The audit procedures that the firm will be following are:

List or identify procedures (i.e., Caltrans Standard Audit Program Procedures in Exhibit 10-M of this chapter.)

At the end of the preaward audit, a copy of the audit report will be forwarded to your offices for review. Should you have any questions, please call \_\_\_\_\_.

Sincerely,

Local Representative Name \_\_\_\_\_

Title \_\_\_\_\_

Agency \_\_\_\_\_

Attachments: Proposed Contract  
Draft Cost Proposal(s)

cc: DLAE



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**Preaward Audit**

(Name of Contractor)

Sample - Audit Program

W/P No:

Audit No:

Contract No:

Auditor:

Reviewer:

ITEM NO.	Audit Program Contents	AUDITOR INIT/DATE	WORKPAPER REF.
I	<p><b>Purpose</b></p> <p>The purpose of a preaward evaluation is to provide the approving authority with professional advice on accounting and financial matters and to assist in the award and administration of proposed consultant contracts. It also alerts both the consultant and the approving authority to potential problems relative to the Consultant's basic agreement, cost/price proposal, procurement procedures, or cost accounting system.</p>		
II	<p><b>SCOPE</b></p> <p>The examination shall include reviews of applicable laws and regulations, the contract requirements, and the Contractor's system of internal controls. Audit tests of accounting records and such other auditing procedures considered necessary to meet the objectives will be conducted. Applications of audit procedures will be governed by the individual contract under audit.</p>		
III	<p><b>STANDARDS</b></p> <p>The audit is to be conducted in accordance with generally accepted governmental auditing standards.</p>		
IV	<p><b>APPLICABLE RULES AND REGULATIONS</b></p> <ol style="list-style-type: none"> <li>1. Contract Provisions</li> <li>2. CFR 48, Part 31- Federal Cost Eligibility</li> <li>3. CFR 49, Part 18- Uniform Administrative Requirements</li> </ol>		
V	<p><b>OBJECTIVES</b></p> <ol style="list-style-type: none"> <li>1. To determine if the consultant agreement specifically provides for the following: <ul style="list-style-type: none"> <li>o three-year record retention period and right to audit.</li> <li>o method of payment</li> <li>o references to cost principles set forth in CFR 48, Chapter 1, Part 31 for allowability of individual items of cost; CFR 49, Part 18, for administrative procedures; and OMB Circular A-11D, for nonprofit subrecipients.</li> </ul> </li> <li>2. To determine if the Consultant's cost proposal contains a breakdown of the estimate for performing the work, and that the proposed costs are reasonable in relation to actual historic costs and estimating procedures.</li> <li>3. To determine if the Consultant's cost accounting system is capable of accumulating reasonable, allocable, and allowable costs.</li> </ol>		
VI	<p><b>PRELIMINARY AUDIT STEPS</b></p> <ol style="list-style-type: none"> <li>1. Review the proposed contract. <ol style="list-style-type: none"> <li>a. Document your review and note any exceptions needed to be included on the audit report.</li> </ol> </li> </ol>		

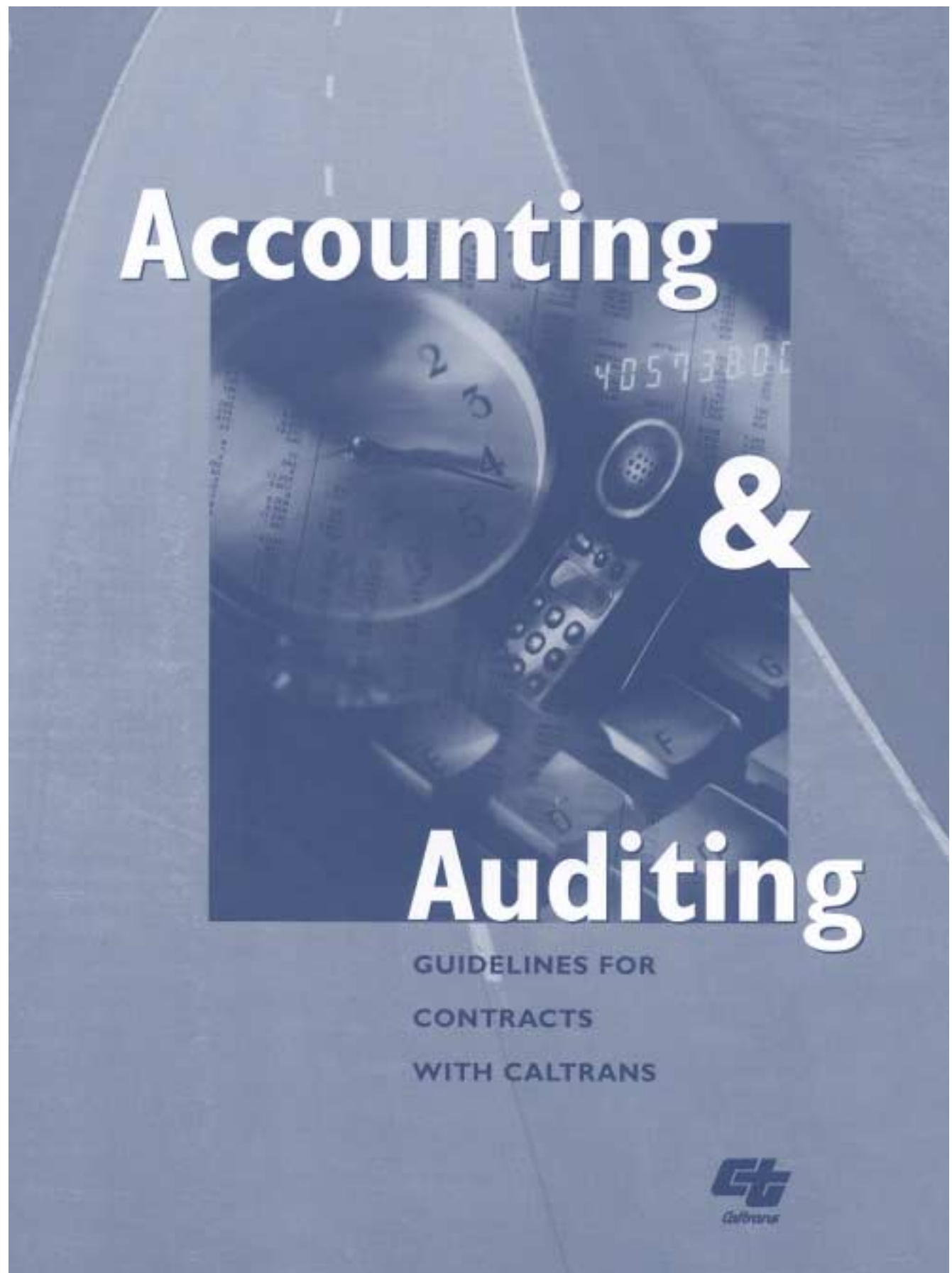
	<p>2. Review the permanent file.</p> <p>a. Ascertain the nature, timing, and extent of the last internal control and accounting system review.</p> <p>3. Review the cost proposal.</p> <p>a. Determine if the Consultant's cost/price proposal contains a breakdown of the estimate for performing the work.</p> <p>b. Foot and extend cost data.</p> <p>c. Obtain missing cost proposal information, if necessary.</p> <p>d. Compare data with permanent file. Obtain updated cost information, if necessary.</p> <p>e. Comment on unusual amounts, unfavorable trends or differences between current and past costs.</p> <p>f. Recalculate cost proposal in consideration of any audit exceptions.</p> <p>4. Determine scope of audit.</p> <p>a. Omit audit step 2 (field work) if:</p> <ul style="list-style-type: none"> <li>- a recent audit found the accounting system adequate, and</li> <li>- the accounting system is adequate to accumulate and segregate additional contract costs.</li> </ul> <p>b. If the accounting system has not recently been reviewed or does not appear to be able to take on additional contract costs, discuss the nature, timing, and extent of audit procedures with supervisor.</p> <p>5. Prepare preliminary Audit Plan and Time Budget</p> <p>6. Contact the Contract Administrator to inform him/her of the following:</p> <p>a. Scheduled date of field work.</p> <p>b. Tentative completion date.</p> <p>c. Any anticipated problems, etc.</p> <p>Note: The Contract Administrator should be kept abreast of all pertinent audit issues. Any problems in obtaining necessary information, etc., should be discussed with him/her immediately and documented in the work papers.</p> <p><b>VII AUDIT STEPS - FIELD WORK</b></p> <p>1. Contact the Contractor and arrange a date for the audit.</p> <p>a. Inform the Contractor of the type of information, records, and personnel needed, and arrange for work space.</p>		
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	<p>b. Request that the Contractor prepare schedules of the calculations of all billing rates such as overhead, fringe benefits, in-house direct cost billing rates and any other rates used in billing. If possible, have these schedules sent to the auditor for review before the date of field work.</p> <p>c. Inquire whether the Contractor has been audited within the previous year by the DCAA or similar Federal agencies, or has had an independent CPA review overhead, internal controls or project costing systems. If so, obtain a copy of the audit report and/or review working papers for consideration when evaluating internal controls, overhead rates, etc.</p> <p>d. Prepare and send an engagement letter to the Contractor to confirm the above discussion. Send a copy of the letter to the Contract Administrator.</p>		
	<p>2. Conduct an entrance conference with the Consultant to ensure coverage of the following:</p> <ul style="list-style-type: none"> <li>- Purpose, scope and objective of the preaward evaluation.</li> <li>- Anticipated time frame of audit field work.</li> <li>- Whether the Consultant is familiar with CFR 48, Chapter 1, Part 31. If not, Consultant can call (202) 783-3238 to obtain a copy of these regulations.</li> <li>- Records, etc. needed to perform the audit.</li> <li>- Intention to keep Consultant updated on audit progress and to discuss all audit exceptions prior to issuance of an audit report.</li> <li>- Documentation of the entrance conference in the work papers.</li> </ul>		
VIII	<p><b><i>Control Structure Survey</i></b></p> <p>1. Review and evaluate the Contractor's internal control structure.</p> <p>a. Prepare or update a written narrative, flowchart and/or completed internal control questionnaire which adequately describes the accounting system including significant internal controls over contract costs in order to adequately plan the audit and test the various applications. This understanding should include knowledge of the Contractor's control environment, accounting system and control procedures. Generally, the relevant policies and procedures pertain to a Contractor's ability to record, process, summarize, and report contract and financial information and to ensure compliance with applicable laws and regulations.</p> <p>b. Selectively examine (test) the accounting records and underlying source documents only to the extent necessary to determine if the system has the ability to accumulate and segregate reasonable, allocable and allowable costs through the use of a cost accounting system. The following are some of the attributes which should ideally be found in such a system:</p>		

	<p>Chart of accounts (direct and indirect accounts).</p> <ul style="list-style-type: none"> <li>- Segregation of costs by contract, category of cost and milestones (if applicable).</li> <li>- Proper recording of direct and indirect costs. For example, separate accounts should be used for direct labor, indirect labor, vacation, holiday, sick leave, etc.</li> <li>- consistent accounting treatment of costs in recording and reporting.</li> <li>- Ability to trace from invoices billed to job cost records and original, approved source documents to the general ledger.</li> </ul>		
2.	Prepare a summary of the internal control structure and cost accounting system. The summary should include or reference to a control risk assessment. Finalize Audit Planning document		
3.	Evaluation of cost/price data.		
	<p>a. Obtain source documents and/or other criteria used to establish the cost/price proposal.</p>		
4.	Evaluate the propriety of direct labor costs.		
	<p>a. Select a representative sample of employee timesheets (cards) and test the hourly extensions.</p> <p>b. Trace hours to the payroll journal and compare hourly rates paid to the rates submitted with the cost/price proposal.</p> <p>c. If applicable, compare proposed direct labor rates to prevailing wage and union labor rates.</p> <p>d. If overtime is proposed, does the Consultant have procedures to ensure and document equitable overtime charges to government and non-government contracts?</p> <p>e. Prepare a labor rate analysis and comment on variances.</p>		
5.	Analyze indirect costs (fringe benefits, overhead, general and administrative).		
	<p>a. Request written verification of an approved overhead rate, if available (DCAA or other qualified entity).</p> <p>b. Obtain a written breakdown/schedule of costs included in the rates.</p> <ul style="list-style-type: none"> <li>- Trace the indirect rate schedule to the general ledger.</li> <li>- Scan the indirect cost accounts in the general ledger for unallowable costs.</li> </ul>		

	<ul style="list-style-type: none"> <li>- Test the Consultant's proposed rate by comparing the individual items of cost for allowability and fair presentation with CFR 48, Ch 1, subpart 31.203.</li> </ul>		
	<ul style="list-style-type: none"> <li>c. Schedule all disallowed costs.</li> <li>d. Recalculate the overhead rate and comment on variances.</li> </ul>		
6.	Evaluate the propriety of other direct costs (materials, transportation, equipment, per diem, etc.) and Subcontractors. <ul style="list-style-type: none"> <li>a. Determine the methods used to establish the cost materials, transportation, and per diem, etc.</li> <li>b. Compare proposed rates or costs with prevailing rates or past experiences.</li> <li>c. Determine if direct costs are independent from the indirect cost pool.</li> <li>d. Schedule all costs which do not appear to meet the criteria established in CFR 48, Chapter 1, Subpart 31.2.</li> </ul>		
7.	Evaluate the proposed fixed fee. <p>As field work progresses, keep the Controller or other contact person aware of the findings or problems as they arise. Resolve the matters if possible. Document these conversations in the work papers.</p>		
8.	Evaluate the Contractor's financial capability - Ratio Analysis		
9.	Prior to completion of field work, discuss all exceptions with the consultant ensuring coverage of: <ul style="list-style-type: none"> <li>- Scope and objectives of the preaward audit.</li> <li>- The condition, criteria, cause, effect, and recommendation for each exception noted.</li> <li>- Caltrans' review process and reporting procedures.</li> <li>- Any questions the Consultant may have.</li> </ul>		
IX	COMPLETION		
1.	Complete work papers to assure that they are properly headed, indexed, signed, dated, and cross referenced. In addition, each work paper should include, or be reference to, a statement of purpose, source, analysis and conclusion.		
2.	Prepare an audit summary which documents the purpose, objectives, procedures, results/conclusions and recommendations.		
3.	Cross reference all exceptions to the appropriate work papers.		
4.	Prepare draft audit report.		

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|----|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|--|
| 5. | If necessary, schedule a close out conference with the Consultant to discuss any exceptions not discussed or resolved as of completion of fieldwork. Also, if material findings are identified, the Contract Administrator should also be contacted. Document these conversation/conferences.                                                                                                                                                                                                                                                                                                                                                                                         |  |  |
| 6. | Complete audit assignment card.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |  |  |
| 7. | Update the permanent file.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |  |  |
| 8. | Submit completed work papers and draft audit report to supervisor for final review.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |  |  |
| 9. | <p>Prepare final report and distribute as follows:</p> <ul style="list-style-type: none"> <li>* Original - Requester</li> <li>* If Requester is headquarters than:<br/>1 copy - Headquarters Contract Office</li> <li>* If Requester is District than:<br/>1 copy - District Contract Officer or District Consultant Services</li> <li>* 1 copy - Audit file (Section B)</li> <li>* 1 copy - Chronological File (Audit Reports Binder)</li> <li>* 1 copy - P# File (Audit Reports Binder)</li> <li>* 1 copy - Audit Office</li> <li>* 1 copy - Supervisor</li> </ul> <p>NOTE: A "cc" notation is needed on the final report for reports distributed outside of the audits office.</p> |  |  |







## INTRODUCTION

The purpose of this brochure is to outline for you, a potential contractor with the California State Department of Transportation (Caltrans), the basic elements of an adequate accounting system, and the types and objectives of audits that will be performed in relation to your contract. In order to successfully compete for a contract and meet the audit requirements, a contractor (whether a prime or subcontractor) must have a system of record keeping and internal control. Although a specific cost accounting system is not required, a contractor needs a system which will assure compliance with the terms of the agreement. A preaward audit will be performed to assure you meet these requirements prior to contract execution. If your system is deficient, the contract will not be executed.

Caltrans reimburses, through your overhead rate, the costs attributable to establishing and maintaining a cost accounting system.

Staff time and other costs related to an audit performed of your contract are normally reimbursed through your overhead rate.

## ACCOUNTING SYSTEM

Contractors (whether a prime or subcontractor) planning to contract with Caltrans must have an accounting system which meets the following objectives:

- The ability to record and report financial data in accordance with generally accepted accounting principles.
- A system of record keeping to ensure that costs billed to Caltrans are:
  - a. Supported by adequate documentation.
  - b. In compliance with the terms of the contract and applicable Federal and State regulations specified in the contract.
- A system of record keeping ideally includes the following:
  - a. General ledger
  - b. Job cost ledger
  - c. Labor distributions
  - d. Time records
  - e. Subsidiary journals
  - f. Chart of accounts
  - g. Financial statements
- The ability to accumulate and segregate reasonable, allocable (incurred solely for a project) and allowable (per terms of the contract) costs through the use of a cost accounting system. The following are some of the attributes which would ideally be found in such a system:
  - a. A chart of accounts which includes indirect and direct general ledger accounts. Indirect costs are not specifically identified to a project, for example, rent and/or utilities. Direct costs are specifically identified with a project, for example, drafting hours and/or design hours.
  - b. Segregation of costs by contract, category of cost and milestones (if applicable).
  - c. Proper recording of direct and indirect costs. For example, recording of labor costs should provide that non-project indirect hours be recorded on a time sheet and in the accounting records to an administration, vacation, sick leave or other indirect cost account/code. Direct project hours should be recorded on a time sheet and in the accounting records to a direct project cost account/code.

- d. Consistent accounting treatment of costs in recording and reporting. For example, if travel expense is charged directly to a project, all travel expense incurred on any project should be considered a direct cost. As a result, project-related travel, whether reimbursable per the contract terms or not, should be included as a direct cost.
- e. Ability to trace from invoices submitted to Caltrans to job cost records and original, approved source documents, for example, time sheets, vendor invoices, cancelled checks.
- f. Ability to reconcile job cost records to the accounting records.
- Compliance with cost principles described in the Code of Federal Regulations 48, Federal Acquisition Regulations System (FAR), Chapter 1, Part 31. Information on how to obtain this regulation is described under "Audit Criteria" on the following page.
- Procedures to monitor and adjust projected overhead rates to actual rates.
- Controls to ensure that written approval is obtained prior to any changes to the contract.
- Procedures to retain accounting records and source documentation as required by the terms of the contract.
- A system of internal control which provides reasonable assurance that assets are protected; financial data, records and statements are reliable; and errors and irregularities are promptly discovered, reported and corrected. The elements of a system of internal control should include, but not be limited to, the following:
  - a. Separation of duties for proper protection of assets. Incompatible duties are those that place any person in a position to both perpetrate and conceal errors or irregularities in the normal course of business. For example, the person who writes checks should be different from the person who reconciles bank statements and the person who purchases goods should be different from the person who receives goods.
  - b. Limiting access to assets to only authorized personnel who require these assets in the performance of their assigned duties. For example, blank check stock should be locked in a safe when not in use.
  - c. Authorization and record keeping procedures which provide effective accounting control over assets, liabilities, revenues, and expenditures.
  - d. A system of practices to be followed in the performance of duties and functions. Such a system normally includes policies and procedures which establish the purpose and requirements of the accounting system. For example, timekeeping practices should ideally provide for the following:
    - ▶ Time sheets be prepared, signed and dated by all employees.
    - ▶ Time sheets be completed in non-erasable ink.
    - ▶ Time sheet corrections be crossed out and initialed by the employee.
    - ▶ Time sheets be signed by a supervisor as reviewed and retained on file as required by the contract.
  - e. Personnel with skills and training commensurate with their responsibilities.
  - f. A system of internal review. For example, bank reconciliations and travel expense claims should be reviewed, approved, and signed by a supervisor.





## AUDITS

Contractors, whether a prime or subcontractor, performing under a negotiated contract with Caltrans are subject to the following audits.

- **Preward Audits:** Prior to the award of a contract, Caltrans Audits and Investigations will conduct a preaward audit to determine if the contractor's accounting system is adequate to accumulate and segregate costs as detailed in the previous section and to determine if the proposed costs are reasonable. The audit alerts both the contractor and Caltrans management to problems relative to the contractor's cost proposal and cost accounting system. Due to time constraints in the award process, your cooperation in scheduling the preaward audit with short notice will expedite the execution of your contract.
- **Interim Audits:** Interim audits are performed on an as needed basis. During the preaward audit, if it is determined that the contractor's accounting system is new or minor deficiencies are noted, an interim audit is scheduled to determine that the system is functioning adequately to ensure that billed costs are supported and that any deficiencies were corrected. An interim audit may be requested by the contract administrator or by Caltrans management to address concerns during the course of the contract. Also, an audit manager may initiate an interim audit of a multi-year contract to ensure that costs reimbursed to date are allowable.
- **Post Audits:** Post audits of contracts are performed routinely after project completion. Post audits are performed to determine whether the costs claimed are allowable, allocable, reasonable, and in compliance with the Federal and State laws and regulations as well as the fiscal provisions stipulated in the contract. The examination includes reviews of applicable laws and regulations, the contract requirements and the contractor's internal control system. Audit tests of the contractor's accounting records and other auditing procedures considered necessary will also be performed. Applications of all audit procedures would also be governed by the individual contract under audit. Unsupported or unallowable costs are normally the result of weaknesses in the accounting system and will be reimbursed to Caltrans.

To provide contractors with a procedure for obtaining prompt and equitable resolution to a dispute arising from a post audit of a non-highway construction cost reimbursement contract, Caltrans has established an Audit Review Committee (ARC). Information explaining the ARC should be found in your contract and/or as an attachment to the post audit report.

## AUDIT CRITERIA

For specific information regarding basic cost accounting systems and applicable State and Federal regulations, please see the following:

- **Code of Federal Regulations 48, Federal Acquisition Regulations System, Chapter 1, Part 31:** This regulation contains cost principles and procedures for the pricing of contracts/subcontracts and the determination, negotiation, or allowance of costs. Contact:

Superintendent of Documents  
Government Printing Office  
Washington, DC 20402

Washington, D.C. (202) 512-1800  
San Francisco (415) 512-2770  
Los Angeles (213) 239-9844

- **California State Administrative Manual:** A reference source for statewide policies, procedures, regulations and information. Contact:

Office of State Publishing,  
Department of General Services.  
Call for order form: (916) 445-2295.

For review of the above references, contact your local library or the California State Library.

California State Library  
Library and Courts Building  
914 Capitol Mall, P.O. Box 942837  
Sacramento, CA 94237-0001

Information: (916) 654-0261

For assistance in establishing an accounting system which will meet the objectives outlined in this brochure, you should contact an accountant and/or bookkeeper who is familiar with cost accounting systems.

*Caltrans is an affirmative action employer. Equal opportunity is offered to all regardless of race, color, creed, national origin, ancestry, sex, marital status, disability, religious or political affiliation, age or sexual orientation. Contractors that contract with Caltrans are responsible for taking necessary and reasonable steps to achieve these same goals.*

**REQUEST FOR AUTHORIZATION  
TO PROCEED WITH PRELIMINARY ENGINEERING (PE)***Local Agency Letterhead*

**To:** (DLAE Name )  
District Local Assistance Engineer  
Caltrans, Office of Local Assistance  
(District Address)

Date: \_\_\_\_\_  
(Federal Number)  
(Project Description)  
\_\_\_\_\_

Dear (DLAE Name):

In order to begin reimbursable preliminary engineering for the above project, we request that you secure Federal authorization and obligate funds for this work. The amounts requested do not exceed the Federal funds provided to this agency in the approved Federal TIP/Federal Statewide TIP (FSTIP).

Attached are the following documents that are required to authorize this phase of work:

Request for Authorization Package

- ☐ Completed Project Prefix Checklist (Exhibit 3-E)
- ☐ Completed Finance Letter (Exhibit 3-F)
- ☐ Completed Data Sheets (Exhibit 3-G)

Field Review Form (Exhibit 7-B)

- ☐ Completed Field Review form, or
- ☐ I will not be preparing the final design at this time. I will transmit the Field Review Form at a later date.

Environmental Document

- ☐ Approved Environmental Document  
Type of Document \_\_\_\_\_  
Approval Date \_\_\_\_\_
- ☐ I have not completed the environmental process and will not be preparing the final design at this time. I will transmit the Environmental Document at a later date.

Pre-Award Audit

- ☐ Completed Audit Disposition (Exhibit 10-K), or
- ☐ Audit Disposition was not completed because Federal-aid or State highway funding will not participate in a consultant contract, or
- ☐ Preaward audit was not done because the consultant contract is for \$250,000 or less, or
- ☐ I will not submit the Audit Disposition at this time. I will submit it to the DLAE prior to entering into a contract with the consultant(s).

I understand that invoice requests for payment will not be processed until an Authorization to Proceed (FNM-76 or E-76) and a Program Supplement Agreement have been executed.

(Check which of the following applies)

- ☐ I plan to request early reimbursement and invoicing for PE costs as incurred. As indicated above, I have included a completed Field Review Form. I am also including the "Agreements Checklist" (Exhibit 4-A) request forms with this transmittal and request that the agreements be prepared now.
- ☐ I do not plan to invoice for PE costs until this phase of the work is completed. I will transmit the "Agreements Checklist" at a later date.

I will not submit any invoice request until I receive notification that the FNM-76/E-76 and Program Supplement Agreement have been executed.

**CERTIFICATION**

I certify that the facts and statements in this "Request for Authorization Package" are accurate and correct. This Agency agrees to comply with the applicable terms and conditions set forth in Title 23, U.S. Code, Highways, and the policies and procedures promulgated by the Federal Highway Administrator and the California Department of Transportation relative to the above designated project.

I understand that each succeeding phase of the project will require a separate authorization to be eligible for Federal reimbursement. I further understand that this Agency is responsible for costs in excess of the Federal funds obligated and all costs incurred before it has received FHWA "Authorization to Proceed" for that phase of the project.

Please advise us as soon as the authorization has been received. You may direct any questions to (Name\_\_\_\_\_) at (phone number).

Signed \_\_\_\_\_  
Title \_\_\_\_\_  
Agency \_\_\_\_\_

Attachments